

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: Winstar Communications, Inc., et al.

Lucent Technologies Inc.,	:	
	:	
Appellant,	:	
	:	
v.	:	Civil Action No.: 06-147
	:	
	:	
Christine C. Shubert, Chapter 7 Trustee,	:	
	:	
Appellee.	:	Bankruptcy Case No.: 01-1430

**DECLARATION OF DAVID R. KING IN CONNECTION WITH THE APPELLEE
CHAPTER 7 TRUSTEE'S MOTION TO STRIKE ITEMS FROM LUCENT
TECHNOLOGIES INC.'S DESIGNATION OF RECORD ON APPEAL AND ISSUES
FROM LUCENT TECHNOLOGIES INC.'S STATEMENT OF ISSUES ON APPEAL**

DAVID R. KING, ESQ., declares as follows under penalty of perjury:

1. I am a member of the bar of the States of New York and New Jersey and a member of Herrick, Feinstein LLP, special counsel to Christine C. Shubert (the "Trustee"), Chapter 7 Trustee for the estates of Winstar Communications, Inc., and Winstar Wireless, Inc., plaintiff in the above captioned adversary proceeding. I have been admitted *pro hac vice* to appear in this case on the Trustee's behalf. I submit this Declaration in connection with the Trustee's motion for the entry of an order striking certain items listed on the Statement of Issues on Appeal (the "Issues Designation") of Lucent Technologies Inc. (Lucent) filed on January 19, 2006 (Docket No. 2) as well as Lucent s Amended Designation of Items to Be Included in the Record on Appeal (the "Record Designation") on March 1, 2006 (Docket No. 6).

2. Attached hereto as **Exhibit A** is a copy of Lucent's Notice of Appeal dated January 9, 2006 (Docket No. 1).

3. Attached hereto as **Exhibit B** is a copy of the Bankruptcy Court's Memorandum of Decision Including Findings of Fact and Conclusions of Law with Respect to Counts VII, X,

and XI of the Second Amended Complaint and Counts 5 and 6 of the Second Amended Answer and Counterclaims dated December 21, 2005 (Adv. Proc. Docket No. 369).

4. Attached hereto as **Exhibit C** is a copy of the Issues Designation dated January 19, 2006 (Docket No. 2).

5. Attached hereto as **Exhibit D** is a copy of the Stipulation annexing the amended Record Designation, dated March 1, 2006 (Docket No. 3).

6. The Trustee has objected to the inclusion of issues 13, 14, and 15 in the Issues Designation, because the issues stem from rulings of the District Court, and therefore cannot be included in this appeal, but are instead reserved for appeal to the Court of Appeals for the Third Circuit. The Trustee sought relief before the Bankruptcy Court for Lucent's inclusion of these issues in the Issues Designation. The District Court decisions on these issues were designated by the Trustee as a part of the record and are attached to the Trustee's "Appellee Designation of Contents for Inclusion in Record of Appeal," a copy of which is attached hereto as **Exhibit E**. (Docket No. 5).

7. In the Trustee's reply brief on the motion before the Bankruptcy Court, the Trustee offered to stipulate that issues 13, 14, and 15 were properly preserved for appeal to the Third Circuit, and asked Lucent to withdraw them from consideration before the District Court. (Adv. Proc. Docket No. 392). A copy of the Trustee's reply brief below is attached hereto as **Exhibit F**.

8. Shortly after filing the reply brief, I spoke with Craig Goldblatt, Esq., counsel for Lucent on this appeal. During the conversation, I asked Mr. Goldblatt whether Lucent was willing to withdraw the issues from the District Court appeal, based on the Trustee's stipulation. Mr. Goldblatt responded that Lucent could not accept the Trustee's stipulation, but that Lucent

would “probably” not reargue the issues if District Court Judge Joseph Farnan (who entered the previous rulings) was appointed to hear this appeal, but would consider raising the issues in this Court if a different District Court judge was assigned to this appeal, depending, among other things, on whether the “law of the case” doctrine might be applicable.

9. By Order dated February 15, 2006, the Bankruptcy Court granted the motion in part and denied the motion in part without prejudice, instructing the Trustee to raise with this Court the matters which are the subject of the instant motion if the Trustee wished them resolved. (Adv. Proc. Docket No. 394). Attached hereto as **Exhibit G** is the Bankruptcy Court's Order dated February 16, 2006.

10. I declare that the statements contained herein are true and correct to the best of my knowledge and the documents attached hereto are each true and correct copies of the documents they purport to be. I also declare that to the extent any of the statements contained herein are not true and correct, I am subject to penalty.

/s/ David R. King

DAVID R. KING

Dated: March 9, 2006
New York, NY

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

**WINSTAR COMMUNICATIONS, INC.,
ET AL.,**

Debtors.

**CHRISTINE C. SCHUBERT, CHAPTER 7
TRUSTEE,**

Plaintiff,

v.

LUCENT TECHNOLOGIES, INC.,

Defendant.

Chapter 7

Case No. 01-1430 (JBR)

**Adversary Proceeding
No. 01-1063 (JBR)**

NOTICE OF APPEAL

Notice is hereby given pursuant to Fed. R. Bankr. P. 8001 that Lucent Technologies, Inc., defendant in the above-captioned adversary proceeding, appeals to the United States District Court for the District of Delaware from the final judgment entered in this action on December 28, 2005 [Docket No. (373)].

The names of all parties to the order appealed from and the names, addresses and telephone numbers of their respective attorneys are:

**Christine C. Schubert, Chapter 7
Trustee, Plaintiff**

Stephen M. Rathkopf
David R. King
Herrick, Feinstein LLP
210 Carnegie Center
Princeton, NJ 08540
(609) 520-9095

Sheldon Rennie
Fox Rothschild, LLP
Mellon Bank Center, Suite 1400
Wilmington, DE 19801
(302) 662-4202

Lucent Technologies, Inc.,
Defendant

Craig Goldblatt
Danielle Spinelli
Wilmer Cutler Pickering Hale and Dorr, LLP
2445 M Street, NW
Washington, DC 20037
(202) 663-6000

Philip D. Anker
James H. Millar
Wilmer Cutler Pickering Hale and Dorr, LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

Paul C. Saunders
Daniel Slifkin
Michael A. Paskin
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

Daniel J. DeFranceschi (DE Bar No. 3272)
Paul N. Heath (DE Bar No. 3704)
Rebecca L. Booth (DE Bar No. 4031)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7700

Respectfully submitted,

Dated: January 9, 2006
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Paul N. Heath

Daniel J. DeFranceschi (DE Bar No. 3272)
Paul N. Heath (DE Bar No. 3704)
Rebecca L. Booth (DE Bar No. 4031)
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7700

WILMER CUTLER PICKERING HALE AND
DORR, LLP

Craig Goldblatt
Danielle Spinelli
Michelle Bock
2445 M Street, NW
Washington, DC 20037
(202) 663-6000

Philip D. Anker
James H. Millar
399 Park Avenue
New York, NY 10022
(212) 230-8800

CRAVATH, SWAINE & MOORE LLP

Paul C. Saunders
Daniel Slifkin
Michael A. Paskin
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

Counsel for Appellant Lucent Technologies, Inc.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Chapter 7
)	Case No. 01-1430(JBR)
WINSTAR COMMUNICATIONS, INC.)	
<i>et al.</i>)	
Debtors)	
~~~~~		
CHRISTINE C. SHUBERT,	)	
CHAPTER 7 TRUSTEE	)	
Plaintiff	)	Adversary Proceeding
v.	)	No. 01-1063 (JBR)
LUCENT TECHNOLOGIES INC.	)	
Defendant	)	
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**MEMORANDUM OF DECISION INCLUDING FINDINGS OF FACT AND
CONCLUSIONS OF LAW WITH RESPECT TO COUNTS VII, X, AND XI OF THE
SECOND AMENDED COMPLAINT AND COUNTS 5 AND 6 OF THE SECOND
AMENDED ANSWER AND COUNTERCLAIMS**

This matter came before the Court for trial on Counts VII (breach of subcontract),¹ X (preference), and XI (equitable subordination) of the Second Amended Complaint² and one count of fraud (Count 5) and one count of negligent misrepresentation (Count 6) of the

¹The parties agree that the alleged breach is a breach of the Agreement for Network Build-out Services (the "Subcontract") and not a breach of any funding obligation under the credit facilities. See Joint Pretrial Memorandum [Adversary Proceeding Docket (hereinafter "Docket") # 292] at Exhibit 12.

²On May 29 and August 7, 2003, the Bankruptcy Court, on Lucent's motion, entered orders dismissing Count IX (breach of covenant of good faith and fair dealing), precluding the Trustee from recovering consequential or punitive damages on any of her claims, and prohibiting the Trustee from obtaining any affirmative monetary recovery on her equitable subordination claim [Docket ## 85, 103]. The Trustee, with Lucent's assent, voluntarily dismissed Counts I through VI and Count VIII [Docket #207].

Second Amended Answer and Counterclaims.³ As set forth in greater detail below, the Court finds that these matters are core proceedings in which the Court may enter final orders, or with respect to Lucent's counterclaims, even if they are related to non-core proceedings, Lucent has consented to the entry of final orders.

In reaching its determinations, the Court considered the entire 21 days of testimony given by 39 witnesses, considered the demeanor and credibility of the 13 witnesses who testified in person⁴ and, to the extent possible the demeanor and credibility of the 16

³Count 2 of the Second Amended Answer and Counterclaims is a count for setoff pursuant to 11 U.S.C. § 553. The parties have stipulated that in the event the Trustee is awarded judgment against the Defendant under the Subcontract, the Defendant is entitled to a total setoff of \$6.3 million. (Stipulation By and Between The Trustee and Lucent Technologies Inc. Concerning Lucent's Counterclaim for Setoff at ¶ 1 [Docket #337]). Counterclaim 3 is a claim for fraud and counterclaim 4 is one for negligent misrepresentation. Both are based on Winstar's alleged representations to Lucent during Lucent's "due diligence" investigation in November and December 2000. Neither of these counterclaims were raised by Lucent in the Joint Pretrial Memorandum as required by paragraph 7(H) and (I) of the Court's Pretrial Order of January 26, 2005 [Docket # 275] ("The parties are ordered to file ... a Joint Pretrial Memorandum approved by all counsel and unrepresented parties, which shall set forth the following: ... (H) The issues of fact which remain to be litigated (evidence at trial shall be limited to these issues); (I) The issues of law to be determined....") and thus are deemed waived. Had they not been waived, the credible evidence supports a finding that Lucent did not carry its burden of proof as it had sufficient knowledge of the financial condition of Winstar during the relevant period that it could not have reasonably relied upon any allegedly misleading information. Lucent's surviving counterclaims for fraud and negligent misrepresentation relate to the breach of the so-called CAPEX covenant.

⁴The witnesses who testified at trial were Paul Pocalyko, Stephen Scherf, Martina Hunt-Majeau, Mark Wilson, Reginald Kipke, Kevin Collins, Christopher Stark, Michael Keefe, Elizabeth Perricone (some of Perricone's testimony also came in via portions of deposition testimony read at trial), Gregory Garrett, Henry Schacht (some of Schacht's testimony also came in via videotaped deposition testimony played at trial), Vernon Terrill, and John Solomon.

witnesses whose videotaped testimony was introduced,⁵ considered the credibility of the witnesses whose testimony was read into the record, reviewed the over 1400 exhibits (including many duplicates) totaling many thousands of pages admitted in evidence, heard arguments of counsel, and reviewed the various pre- and post-trial pleadings submitted in support of each party's position. The following decision constitutes the Court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052, and as set forth below, to the extent that the district court concludes that this Court may only enter proposed finding and rulings pursuant to Fed. R. Bank. P. 9033 with respect to some or all of the counts or counterclaims, the following constitutes the Court's proposed findings and rulings with respect to such counts or counterclaims.

EXPLANATION OF CITATIONS

The parties have stipulated to certain facts as most recently set forth in the Revised Joint Stipulation of Uncontested Facts (the "Revised Joint Stipulation"), attached as Exhibit A to the Renumbered Joint Stipulation of Uncontested Facts [Docket #331].

Citations to trial exhibits introduced by the Plaintiff are cited as "PX #"; Defendant's trial exhibits are cited as "DX #." In many instances the parties introduced the same

⁵The witnesses whose testimony was admitted via videotaped depositions were Nathan Kantor, Lisa Hicks, William Zlotnick, Jill Diroma, Frederic Rubin, David Ackerman, Richard McGinn (some of McGinn's testimony also came in via portions of deposition testimony read at trial), William Rouhana, Michael Montemarano, Deborah Hopkins, Gary Simpson, William Fullerton, Richard Uhl, Kevin Monaco (some of Monaco's testimony also came in via portions of deposition testimony read at trial), Gary Goldman, and Kevin Howell. As noted above some of Schacht's testimony was introduced on videotape; the Court also had the opportunity to observe this witness when he testified in person later during the trial.

document or portions of the same document. The Court generally has cited to duplicate documents by only one exhibit number. Citations to specific pages within a multiple-page exhibit are cited by exhibit number and Bates number or by page number if the exhibit does not contain Bates numbers.

Citations to testimony in the trial transcripts (which include only testimony from witnesses who were physically present in court and deposition testimony read into the record) identify the witness, followed by the designation "Depo" in instances where the deposition testimony was read into the record, and "Tr." along with reference to the transcript volume, the page and, where needed, line numbers. The trial transcripts appear on the docket at numbers 322-326, 338, and 351-356.

Citations to transcripts of videotaped deposition testimony (which was played during trial but not transcribed as part of the trial transcript) contain the designation "Video" and identify the witness; if necessary, whether the testimony is designated as "Direct," "Cross" or "Redirect,"⁵ the page and line numbers of the transcribed deposition testimony. The transcripts of the videotaped depositions or portions thereof that were introduced at trial were admitted as exhibits and are listed in the Stipulated Joint Trial Exhibits [Docket #

⁵In many instances non-consecutive portions of videotaped testimony were introduced. In designating the corresponding transcripts, the parties, for some but not all of these witnesses, renumbered the pages sequentially and kept the reference to the original volume and page. In some instances while the renumbered pages introduced as a witness' direct testimony begin with page 1, so do the first pages of the witness' cross examination and redirect testimony. The Court will refer to the renumbered page designation as "direct," "cross" or "redirect" when necessary and omit reference to the original volume and page numbers unless such additional citation is necessary to avoid confusion.

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JURISDICTION

1. In order to understand the Court's conclusions with respect to its jurisdiction to enter final orders,⁷ it is necessary to explore Lucent's objection to this Court's entry of a final order. On April 18, 2001 (the "Petition Date") Wireless Communications, Inc. ("Winstar") and Winstar Wireless, Inc. ("Wireless" and collectively with Winstar, the "Debtors") filed voluntary petitions for reorganization pursuant to Chapter 11 of the United States Bankruptcy Code. (Revised Joint Stipulation, ¶ 3). In January 2002 the cases were converted to Chapter 7 and shortly thereafter Christine C. Shubert (the "Trustee") was appointed as the Chapter 7 trustee. (*Id.*, ¶¶ 3 and 4).

2. This adversary proceeding was commenced by the Debtors on the Petition Date. In July 2002 the Trustee stepped in as the Plaintiff and soon thereafter filed her Second Amended Complaint and Jury Demand ("Second Amended Complaint") [Docket #69], the operative complaint in this case. As the caption of the Second Amended Complaint suggests, the Trustee requested a jury trial on all actions that could be tried to a jury. In the Second Amended Answer and Counterclaim of Defendant Lucent Technologies Inc. ("Lucent") to the Second Amended Complaint ("Second Amended

⁷Whether the Court treats its order as final under Fed. R. Bankr. P. 7052 or proposes findings and rulings to the district court under Fed. R. Bank. P. 9033 will affect the way in which the parties respond to the orders issued contemporaneously herewith. Moreover "a proceeding's core or non-core nature is crucial in bankruptcy cases because it defines both the extent of the Bankruptcy Court's jurisdiction, and the standard by which the District Court reviews its factual findings." *Halper v. Halper*, 164 F.3d 830, 836 (3d Cir. 1999). Compare Fed. R. Bankr. P. 9033(d) with Fed. R. Civ. P. 8013.

Answer"), dated March 24, 2004 [Docket #156], Lucent also demanded a jury trial "on all issues properly triable thereby." Subsequently the Trustee withdrew her request for a jury trial.⁸ The Trustee alleged that these proceedings are core; Lucent disagreed except with respect to the preference action. (Second Amended Complaint at ¶ 3; Second Amended Answer at ¶ 3).

3. In June 2004 Lucent sought discretionary withdrawal of the reference pursuant to 28 U.S.C. § 157(d) in the district court and a waiver of Local Bankruptcy Court Rule 5011-1 as it did not file a contemporaneous motion asking the Bankruptcy Court to determine whether these matters were core or non-core [Docket # 208].⁹ In July 2004 Lucent filed a memorandum in support of its withdrawal motion [Docket # 237] and urged withdrawal of the reference on the grounds that Lucent was entitled to a jury trial on the Trustee's preference and breach of contract claims and on its own fraud and negligent misrepresentation counterclaims. The Bankruptcy Court then stayed its proceedings pending the district court's determination of the withdrawal motion.

4. In November 2004 the district court entered its Memorandum Opinion and Order [District Court Docket ## 11 and 12] denying the withdrawal motion. Specifically the

⁸The district court concluded that the Trustee had the right to withdraw her jury demand without Lucent's consent. Memorandum Opinion, dated November 16, 2004, at 7 entered in *Shubert v. Lucent Technologies, Inc.*, United States District Court for the District of Delaware Civil Action 04-928 [District Court Docket # 8].

⁹Contemporaneously with the filing of the withdrawal motion, Lucent filed a Motion for Summary Judgment [Docket # 210] seeking judgment from the Bankruptcy court on all three remaining counts. The motion is silent with respect to any objection to the entry of final orders.

district court concluded that Lucent had waived its right to a jury trial by the filing of its proofs of claim and that Lucent did not meet the standards for a permissive withdrawal of the reference for "cause" under *In re Pruitt*, 910 F.2d 1160, 1168 (3d Cir. 1990).

5. From before the filing of the withdrawal motion, through the conclusion of the Trustee's case-in-chief in this Court when Lucent then unsuccessfully sought judgment on partial findings pursuant to Fed. R. Bank. P. 7052, until after submission of all the evidence, and indeed, submission of each party's proposed findings of fact and conclusions of law in this adversary proceeding,¹⁰ Lucent did not raise the issue that the Bankruptcy Court lacked jurisdiction to enter final judgment. In fact the record is clear: Lucent sought a final order in its favor on several occasions from this Court.¹¹

6. On the evening of June 9, 2005, Lucent filed a letter, dated June 8, 2005 [Docket #343], "remind[ing] the Court that Lucent has not consented to the Court's jurisdiction to

¹⁰The last day on which evidence was submitted was May 11, 2005. Both parties rested at that time. Lucent electronically filed its proposed findings of fact and conclusions of law on June 6, 2005 at 11:32 p.m. Closing arguments, which of course are not evidence, occurred on June 13, 2005.

¹¹Lucent sought summary judgment on Trustee's preference and breach of contract claims as well as its own claims for fraud and negligent misrepresentation in June 2004. There is nothing in the pleadings to suggest Lucent was asking the Court to provide proposed findings and conclusions to the district court. In the Pretrial Memorandum, the parties were unable to agree as to the legal issues to be decided so each party set forth its position. Nowhere in Lucent's detailed 12 page statement of the legal issues, or indeed anywhere else in the Pretrial Memorandum, does Lucent allege the Court lacked jurisdiction to enter final orders. At the conclusion of the Trustee's case in chief, Lucent orally and in writing sought judgment pursuant to Fed. R. Bank. P. 7052 and again did not raise an objection to this Court's entering a final order. Similarly Lucent's proposed findings and conclusions do not suggest that there is an ongoing dispute as to whether these proceedings fall outside the core jurisdiction of the Court.

issue final orders or judgments with respect to non-core proceedings in this matter." In the letter Lucent identified the Trustee's breach of the subcontract claim and Lucent's fraud and negligent misrepresentation counterclaims as non-core. Although the June 8, 2005 letter cites to Lucent's Second Amended Answer and Counterclaims to Second Amended Complaint in support of its position that it has not consented to the entry of final orders by this Court, its failure to mention the withdrawal motion or the district court's ruling is striking and perhaps intentionally deceptive.¹²

7. At closing argument Lucent maintained that the district court's decision did not address the core/non-core issue but only whether Lucent was entitled to a jury trial. Although the district court plainly concluded that the matters on which Lucent claimed a jury trial were triable only in equity, the district court concluded that Lucent's filing of its proofs of claim triggered the claims allowance process.¹³ The "allowance or disallowance of

¹²The Court views the statement in the same June 8, 2005 letter that "[t]his court has never decided whether these claims are core or non-core" as another example of counsel's attempt to mislead this Court. The statement, although technically correct, was occasioned by Lucent's own behavior. As the district court noted, one of the grounds for denying the withdrawal motion was Lucent's failure to follow Local Bankruptcy Rule 5011-1 which required that Lucent file a motion seeking a determination by the Bankruptcy Court as to whether these counts and counterclaims were core or not. Moreover, as discussed herein, whether this Court views the claim and counterclaims as core or non-core is largely irrelevant because, contrary to Lucent's argument, the district court has definitively spoken on this issue when it found that the claims and counterclaims were part of the claims allowance process and when it refused to find, as Lucent had urged, that the claims and counterclaims were independent of the proofs of claim.

¹³"[T]he Court finds that the Trustee's subsequent preference action is now part of the claims allowance process, and is triable only in equity." Memorandum Opinion at 6-7. "The Court is not persuaded by Lucent's argument that the determination of its proofs of claim does not depend on the outcome of the Trustee's Subcontract Claim. The Court finds that the Trustee's Subcontract Claim may affect the ordering of creditors or the equitable distribution of the res of the estate and, thus, are now part of the claims

claims against the estate" is one of the specifically enumerated types of actions which fall within the express definition of a core proceeding. 11 U.S.C. § 157(b)(2)(B).

8. Following the district court's decision, Lucent filed a motion seeking certification of the district court's order pursuant to 28 U.S.C. § 1292. That motion was pending in the district court when this case was being tried before the Court. Subsequently the district court denied the motion.¹⁴ The district court stated that this Court "has not determined whether this matter is a core or non-core proceeding." (Memorandum Order [District Court Docket #21] at p.3).

9. The Court, however, interprets the district court's earlier findings that the claims and counterclaims fall within the claims allowance process to necessitate a finding that these actions are core pursuant to 28 U.S.C. § 157(b)(2)(B). While fully cognizant of this Court's role in following the findings and conclusions of the district court with respect to jurisdiction in this case, lest Lucent continue to espouse the position that whether these proceedings fall within the core jurisdiction of the Bankruptcy Court remains an open issue,

allowance process, triable only in equity." *Id.* at 7-8. "The Court finds that Lucent's Fraud and Negligent Misrepresentation counterclaims involve a decision regarding distribution of the bankruptcy estate and, thus, are now part of the claims allowance process, triable only in equity." *Id.* at 8.

¹⁴Throughout the course of this case and indeed, after closing arguments, the parties sent a flurry of letters to the Court. Many of them were little more than recitations of the squabbling between the parties regarding alleged misstatements of facts. Ultimately the Court issued an order cautioning the parties that it would not tolerate such behavior [Docket # 350]. Given the district court's Memorandum Order, however, the Court would have expected the parties to file some type of notice advising this court of the district court's decision. Neither parties, however, informed the Court of the district court's decision and order. The Court only discovered the Memorandum Order when it checked the district court docket as it was about to issue these findings and rulings.

this Court seeks to be clear: even if the district court did not intend its use of the phrase "claims allowance process" to be read as synonymous with the language of section 157(b)(2)(B), the Court's independent examination of its own jurisdiction would lead to the same conclusion, namely, the counts decided herein are core pursuant to 28 U.S.C. § 157(b)(2)(B). Although the counterclaims for fraud and misrepresentation could be classified as non-core related to actions, Lucent has given its implicit consent to the entry of final orders on those counterclaims. The rationale for these findings is set forth below.

10. As set forth in greater detail below, in 1998 Lucent and Winstar entered into a Credit Agreement (the "First Credit Agreement") (DX 96) whereby Lucent was the primary secured lender to Winstar, and a Supply Agreement (PX 123) whereby Lucent was to provide Winstar with a turnkey buildout of its global communications network. Because Lucent was unable or unwilling to perform the buildout, it subcontracted services to Wireless under the Network Agreement for Buildout Services (the "Subcontract") (DX 177). The expectation was that Lucent would, in time, assume all of its obligations under the Supply Agreement. Accordingly, the Supply Agreement contemplated that Lucent would "develop a transition plan with Winstar's input, review and potential approval" scheduling Lucent's assumption of the various aspects of the buildout. (PX 123 at Schedule A ¶3.3(a); see also PX 123 at ¶6.1 and ¶6.5). Although all obligations under the First Credit Agreement were fully paid in 2000, the First Credit Agreement was replaced by a Second Credit Agreement (DX 29). The anticipated Transition Plan never came to

fruition¹⁵ and thus the parties continued to operate under the Supply Agreement and Subcontract.

11. In October 2001 Lucent filed a proof of claim (the "Proof of Claim") (PX 340) which, on its face, states Lucent held a secured claim (and to the extent not secured, an unsecured claim) in "[a]n amount not less than \$138,957,218.90" for "goods sold," "money loaned," and "other." In the "Summary of Supporting Documentation" attached as Tab A.2 to the Proof of Claim, Lucent described the documents which support its claim as the "Supply Agreement ..., any amendments thereto and *any and all related documents, agreements and statements of work.*" (Emphasis added). The Subcontract is certainly an agreement related to the Supply Agreement; it is the means by which Lucent was to fulfill its obligation to perform the network buildout. In addition, although the parties do not define a "statement of work," its plain meaning suggests it is nothing more than a description or list of work performed. The March 2001 "spreadsheet,"¹⁶ against which Lucent refused to pay, is a breakdown of the services performed. (PX 245). Thus this spreadsheet appears to qualify as a statement of work. Whether Lucent may have breached the Subcontract by refusing to pay the March 2001 spreadsheet has a direct

¹⁵The Supply Agreement defines the Transition Plan as "the plan specified in Schedule A regarding Lucent's time periods to begin providing certain of the Services as specified in the plan." (PX 123 ¶1.1(qq)). Schedule A, titled "Statement of Work," describes Lucent's anticipated role in designing, building, and managing the network. Exhibit A-4 is titled "Initial Transition Plan." The Initial Transition Plan is not the "Transition Plan" which the parties agree never came to be.

¹⁶The Court uses the term "spreadsheet" because this is a term used by the parties to describe this document. What the document is or should be deemed to be is the matter of some discussion, *infra*.

bearing upon whether Lucent may recover under its Proof of Claim and if so, in what amount. Therefore the breach of the Subcontract claim falls within the core jurisdiction of the Court. 28 U.S.C. § 157 (b)(2)(B). *Southeastern Sprinkler Co., Inc. v. Meyertech Corp.* (*In re Meyertech Corp.*), 831 F.2d 410, 418 (3d Cir.1987)(creditor's filing a proof of claim on a pre-petition breach of contract action created an action in bankruptcy court that "[b]y its very nature [] fits directly under the more specific definition of a core proceeding under § 157(b)(2)(B)"). See also *S.G. Phillips Constructors, Inc. v. City of Burlington, Vermont* (*In re S.G. Phillips Constructors, Inc.*), 45 F.3d 702 (2d Cir.1995)(filing a proof of claim converts a pre-petition state law claim into a core proceeding); *In re NDEP Corp.*, 203 B.R. 905, 910 (D. Del. 1996).

12. The Court is cognizant of the fact the Proof of Claim was filed after the original complaint in this matter. That fact is insufficient to render the above case distinguishable and the breach of contract claim non-core. Although older cases often cite what has been describes as "a firmly established rule that subject matter jurisdiction is tested as of the time of the filing of the complaint," *Rosa v. Resolution Trust Corporation*, 938 F.2d 383, 392 n. 12 (3d Cir.), *cert. denied* 502 U.S. 981, 1128 S. Ct. 582, 116 L.Ed.2d 608 (1991), the Third Circuit has recognized that the rule is not to be applied blindly.

The principle that jurisdiction is determined at the outset of the action is simply insufficient to support the continuing applicability of [12 U.S.C.] § 1441a(l)(1) to this case. One basic difficulty with this argument is that the letter and spirit of the rule apply most clearly to diversity cases. The Supreme Court set out the rule in the diversity context. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 286, 290-92, 58 S.Ct. 586, 590, 591-92, 82 L.Ed. 845 (1938). In addition, the

Court crafted the rule for the removal of actions from state court, which involves a more lenient standard not relevant here. *Id.* Most importantly, the policies behind removal and the risks of manipulative behavior played a significant role in the Court's decision. St. Paul focused primarily on the monetary threshold for federal jurisdiction, observing that the time of filing rule prevented plaintiffs from subsequently amending their complaint to plead a lesser amount and avoid removal. *Id.* at 294, 58 S.Ct. at 592-93. Similar concerns applied to changes of parties that would potentially destroy diversity of citizenship. *Id.* at 294-95, 58 S.Ct. at 592-93. From the outset, the underlying concern of the time of filing rule was the risk that parties would deploy procedural tactics to manipulate federal jurisdiction.

The rule that jurisdiction is assessed at the time of the filing of the complaint has been applied only rarely to federal question cases. Moreover, in these rare cases, the rule has often been applied axiomatically, without extensive discussion or analysis. See *Rosa v. Resolution Trust Corp.*, 938 F.2d 383, 392 n. 12 (3d Cir.), *cert. denied*, 502 U.S. 981, 112 S.Ct. 582, 116 L.Ed.2d 608 (1991); see also *F. Alderete General Contractors, Inc. v. United States*, 715 F.2d 1476, 1480 (Fed.Cir.1983) (observing in government contracts action that "the decision below is at variance with the long-standing rule in the Federal courts that jurisdiction is determined at the time the suit is filed and, after vesting, cannot be ousted by subsequent events, including action by the parties"). Even in the federal question context, however, the focus of the time of filing rule has been on preventing manipulation of jurisdiction when a claim is removed. As we observed in *Westmoreland Hospital Ass'n v. Blue Cross of Western Pa.*, "a subsequent amendment to the complaint after removal designed to eliminate the federal claim will not defeat federal jurisdiction." 605 F.2d 119, 123 (3d Cir.1979) (emphasis added), *cert. denied*, 444 U.S. 1077, 100 S.Ct. 1025, 62 L.Ed.2d 759 (1980). Along with the obvious goal of judicial efficiency, we perceive the risk of strategic behavior as the primary rationale behind the time of filing rule.

Manipulation of jurisdiction is simply not at issue in this case. There is no suggestion of manipulation, nor would the facts support it. The jurisdiction-destroying transfer of assets

between the RTC and New Rock was an arms length transaction independent of the jurisdictional issue. Without the possibility of manipulative behavior, the primary policy behind the time of filing rule is not implicated.

Our rejection of an absolute time of filing requirement breaks no new ground. Courts that have considered the rule more fully have not hesitated to abandon it where appropriate. In *Boelens v. Redman Homes, Inc.*, 759 F.2d 504 (5th Cir.1985), the Fifth Circuit discussed the policies behind the time of filing rule and held that in a federal question case, where the plaintiff's amended complaint omitted federal counts included in the original complaint on which jurisdiction could be based, the court would look to the amended complaint and decline jurisdiction. *Id.* at 508. The Fifth Circuit interpreted this rule as consistent with the general principle that the amended complaint "supersedes the original and renders it of no legal effect, unless the amended complaint specifically refers to or adopts the earlier pleading." *Id.* at 508.

We were equally quick to reject the time of filing rule in *Lovell Mfg. v. Export-Import Bank*, 843 F.2d 725 (3d Cir.1988):

Lovell ... cites several older Third Circuit cases for the proposition that our determination of jurisdiction should be based solely on the basis of the pleadings, and not on subsequent events.... We are uncertain that these cases stand for the broad proposition for which *Lovell* cites them. However, regardless of what they once might have stood for, and regardless of the merit of these principles elsewhere, plainly they do not reflect recent Third Circuit jurisprudence. As *Lovell* itself concedes, later cases clearly hold that once all federal claims have been dropped from a case, the case simply does not belong in federal court.

Id. at 734 (citations omitted). We concluded by observing "that to the extent a black-letter rule ever existed, precluding a court from relying on post-removal events ..., the Supreme Court clearly did not feel bound by it in *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988)."

Id. at 735. Although the time of filing rule certainly retains a large measure of persuasive efficacy, we read *Lovell* as a clear rejection of any iron-clad time of filing requirement. *Cf. Carr v. American Red Cross*, 17 F.3d 671, 683-84 (3d Cir.1994) (federal jurisdiction arising from the involvement of the American Red Cross in a case will cease on the dismissal of the Red Cross from the case).

New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc., 101 F.3d 1492, 1503-04 (3d Cir. 1996).

13. In this case the operative complaint, the Second Amended Complaint, was filed after the filing of Lucent's Proof of Claim. Moreover, this case does not involve the issue of destroying jurisdiction by subsequent events nor is there any suggestion that the Trustee attempted to manipulate jurisdiction.

14. In its Second Amended Answer, Lucent admitted that the preference action is a core matter but disputed that all other counts were core. (Second Amended Answer at ¶ 3). This denial would include the count for equitable subordination. "Equitable subordination is unquestionably a "core" proceeding pursuant to section 157(b)(2)." *In re M. Paolella & Sons, Inc.*, 161 B.R. 107, 116 (E.D.Pa. 1993), *aff'd* 37 F.3d 1487 (3d Cir. 1994). It is an action "affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship...." *See also In re Insilco Technologies, Inc.*, 330 B.R. 512, 520 (Bankr. D.Del. 2005).

15. Similarly Lucent's fraud and negligence counterclaims arise from Winstar's alleged conduct in connection with the Second Credit Agreement. This is also an

agreement related to the Supply Agreement.¹⁷ It provided the means by which Winstar was to obtain financing to pay for goods and services under the Supply Agreement, including those services subcontracted to Wireless under the Subcontract, and thus Winstar's conduct in connection with its draws under the Second Credit Agreement is within the ambit of the Proof of Claim. Moreover, the Second Credit Agreement gave Lucent the right to conduct the due diligence about which it now complains. The counterclaims are now part of the claims allowance process and within the core jurisdiction of this Court. 28 U.S.C. § 157(b)(2)(B).

16. Finally, even if these matters were non-core, Lucent has waived its objection to this Court's entry of final orders by its conduct. *Abramowitz v. Palmer*, 999 F.2d 1274, 1280 (8th Cir.1993); *In re G.S.F. Corp.*, 938 F.2d 1467, 1476 (1st Cir.1991); *In re Daniels-Head & Associates*, 819 F.2d 914, 918-19 (9th Cir.1987).¹⁸ Not only has Lucent

¹⁷Section 11.3(a) of the Supply Agreement expressly provides:

Lucent shall provide WinStar financing in accordance with the Credit Agreement and otherwise in accordance with the terms of this Agreement.

¹⁸Although Fed. R. Bankr. P. 7012(b) provides that in non-core matters, "final orders and judgments shall not be entered on the bankruptcy judge's order except by express consent of the parties," the substantial weight of authority holds that consent may be implied. 10 Collier on Bankruptcy ¶ 7012.11 at 7012-25 n. 3 (Bender 2003). Moreover courts have found expressions of consent based upon a party's actions such as filing a complaint. *Id.* In its counterclaims contained in the Second Amended Answer, Lucent pled only that counterclaims one and two were core. The pleading is silent with respect to any mention of whether the remaining counterclaims are core or not. But in pleading, Lucent requested that judgment be entered in its favor on all counterclaims which should properly be viewed as Lucent's express consent to this Court's jurisdiction to enter final orders.

narrowed what counts and counterclaims it believes fall outside the core jurisdiction of the Bankruptcy Court,¹⁹ Lucent repeatedly sought judgment in its favor without noting that the Court could only recommend findings and conclusions to the district court.²⁰

Baldwin-United Corp. v. Thompson (In re Baldwin-United Corp.), 48 B.R. 49, 54 (Bankr. S.D. Ohio 1985) (consent may be implied from failure to object or from any act indicating a willingness to have the bankruptcy court determine a claim). Similarly in the Joint Pretrial Memorandum [Docket # 292] Lucent did not raise the core or non-core nature of the claims and counterclaims as one of the legal issues to be determined. Finally Lucent has asserted a setoff claim against the estate which it acknowledges is a core matter. *In re Iridium Operating LLC*, 285 B.R. 822, 832 (S.D.N.Y. 2002). The parties agree Lucent's

¹⁹ In its closing argument Lucent argued that the Court could not enter a final order only with respect to the breach of the Subcontract claim (Tr. 22-50) and thus the Court finds Lucent waived its objection to the entry of final orders with respect to its counterclaims.

²⁰ During closing argument Lucent's attorney conceded, in response to questioning by the Court, that he had not raised the issue of core versus non-core jurisdiction with the Court directly but had informed the Court during the summary judgment arguments that Lucent had sought certification of the district court's order. At the summary judgment argument, counsel's sole discussion of any challenge to this Court's jurisdiction was as follows:

Mr. Saunders: Your Honor, I should point out, unless Your Honor already knows this, that we have asked Judge Famum to certify, under Section 1292(b), the jury trial issue.

Transcript of December 14, 2004 Hearing [Docket #274] at 20-21. Moreover the argument that this statement put the Court on notice that the core/non-core dichotomy was at issue in the district court is wholly inconsistent with Lucent's argument that the district court focused only on the jury trial issue and did not address the core/non-core issue.

setoff claim be set off against any monetary award on the breach of the Subcontract claim.

The Court believes this is further evidence of Lucent's waiver.

17. For all of the foregoing reasons, the Court concludes these are all core matters under 28 U.S.C. § 157 and, to the extent not core matters, Lucent has consented to entry of final orders by this Court. Under the Standing Order of Reference, the Court will enter final judgment.

OVERVIEW OF FACTS AND THE PARTIES' CLAIMS

18. At its essence this case is simply a tale of two companies -one large, one small- which entered into what each expected to be a mutually beneficial relationship to build a wireless communications network and deliver services to customers via that network. What became apparent as the evidence unfolded was that what began as a "strategic partnership" to benefit both parties quickly degenerated into a relationship in which the much larger company bullied and threatened the smaller into taking actions that were designed to benefit the larger at the expense of the smaller. Along the way some executives of each company demonstrated their incompetence and arrogance, and in some instances, now find themselves targets of criminal investigations. The Court notes that there was poor communications not only between the two companies but among each companies' employees. In fact, when Lucent replaced some of its upper level management in the fall of 2000 in response to an internal and SEC investigations, the new executives issued directives regarding the Winstar-Lucent relationship without having even

read the operative agreements. Officers and executives often saw the relationship unfolding from different perspectives such that, if the Court were so inclined to view each witness' testimony in isolation, it could find support for virtually any fact. Yet taking all the *credible* evidence as a whole, it is clear that Lucent used Winstar to inflate Lucent's own revenues, especially in the third and fourth quarters of 2000 when Lucent was "feeling a lot of pressure on revenue." (Hayes, Depo, Tr.13-38). Although Winstar benefitted from some of its dealings with Lucent and its own actions were, at times, no less questionable than Lucent's, the facts point to one conclusion: Lucent extracted what it needed to prop up its own revenue from Winstar in the form of purchases by Winstar of unneeded equipment and manipulated the timing of a refinancing notice that would have put the world on notice that Winstar was in dire financial straits until Lucent could take some more. Lucent used its position as Winstar's lender to ensure Winstar's cooperation by repeated threats to stop both the funding of Winstar's draw requests and the payment of Wireless's invoices for services already performed.

Summary of the Trustee's Claims

19. Although the parties tried this case for 21 trial days, surprisingly most of the critical facts surrounding the relationship of the Debtors and the Defendant are not disputed. The parties could have and should have saved their own and this Court's resources by agreeing to many more underlying facts which really are not disputed.

20. Prior to their bankruptcies, Winstar, a Delaware corporation, was a local and long distance telecommunications carrier and engaged in the buildout of a global broadband telecommunications network to service its customers. (DX 701 at 8). Its stock

was publically traded. (DX 701; PX 460). Wireless, Winstar's wholly-owned subsidiary, was also a Delaware corporation engaged in the design and construction of Winstar's network. (Revised Joint Stipulation ¶¶ 1 and 2).

21. Starting at the customer's end, Winstar would build facilities within the customer's building, known as a "B site," to connect the customer to Winstar's voice and data network via a radio and antenna located on the roof of the customer's building. Radios and antennae were also located on the roof of a Winstar's traffic collection point known as a "hub." Signals were sent between the B site and hub via the radios and antennae. (DX 699 at page 9, line 15 through page 10, line 38).²¹

22. The hubs, in turn, collected the signal traffic and distributed it to a high capacity facility known as a "central office." Typically signals were transmitted between hubs and central offices via fiber cables, either owned by Winstar or leased from an incumbent telephone company. (*Id.*).

23. The central offices had data and voice switching equipment which would connect transmissions from the central office either into other local or long-distance telephone companies or into Winstar's own national fiber network which provided long-haul capacity for Winstar's voice and data services. (*Id.*).

²¹DX 699 is a transcript of the testimony of David Ackerman, Winstar's former group executive/executive vice president for corporate strategy and business planning, given under oath on October 11, 2001 as part of the investigation by the Securities and Exchange Commission ("SEC") styled *In the Matter of Lucent Technologies, Inc.*, file no. HO-9128 (the "SEC Action"). The transcript of the Ackerman videotaped deposition to which DX 699 is an exhibit was admitted as Joint Trial Exhibit 6.

24. Winstar's long-haul network typically was made of fiber supplied by non-Lucent vendors and ran along routes that connected one city to another. (Kipke, Tr. 18-190). Optical equipment that amplified and transmitted the signals were generally located at each end of and at certain intervals along the fiber. (Kipke, Tr. 17-72-73).

25. Lucent, is also a Delaware corporation, whose stock is publically-traded on the New York stock exchange (DX 739 at ¶ 12). It designs and delivers telecommunications systems, services, and products, including software. (Revised Joint Stipulation ¶ 5). It was, at the relevant times, much larger in size and resources than the Debtors. (Ackerman, Video-Direct, p.17, line 18-p. 18, line 5).

26. In the late nineties, telecommunications companies were "hot" companies, and on the grow. Winstar, like many others, desired to increase the size and reach of its network and joined forces with Lucent to help accomplish the expansion. Prior to that time, Winstar and Lucent had an arms'-length vendor-creditor relationship whereby Lucent sold goods to Winstar. (Ackerman, Video-Direct at p. 4, line 12). That relationship changed in October 1998 when the two entered into what they both describe as a "strategic partnership." (Ackerman, Video-Direct at pp. 3-4). The "strategic partnership"²² was created through a series of agreements, three of which figure prominently in this litigation.

27. In October 1998, after three weeks of "lockdown" negotiations, Lucent and Winstar entered into two related agreements: the First Credit Agreement and the Supply

²²The "strategic partnership" was not actually a partnership, a fact Lucent spent considerable time emphasizing. The parties used the term simply to connote their intent to work closely and collaboratively. See October 22, 1998 Joint Press Release (PX 331).

Agreement. (*Id.*). Under the First Credit Agreement, dated October 21, 1998, Lucent became the primary secured lender to Winstar and provided a \$2 billion line of credit (although only \$500 million could be borrowed at any one time) to be used for the purchase of certain products and services in exchange for a lien in virtually all of Winstar's assets. Wireless was not a borrower, guarantor, or otherwise a signatory to the First Credit Agreement. (Revised Joint Stipulation ¶¶ 13 and 14). When the parties entered into the First and subsequently Second Credit Agreements, Lucent expected that the loans were be repaid either by borrowing from other lenders or by raising equity. (Hayes, Depo, Tr.13-36).

28. Under the Supply Agreement Lucent agreed to provide and finance (under the First Credit Agreement which was later supplanted by the Second Credit Agreement) the purchase of products and services. (Revised Joint Stipulation ¶6). Lucent was to provide equipment of a quality described as "Best of Breed" and, in instances where it could not provide Best of Breed equipment, it was obligated to finance Winstar's purchase of such equipment from other vendors.²³ (Ackerman, Video-Direct at pp.81-82; PX 123 at ¶ 11.3 and Schedule H thereto).

²³The Supply Agreement provides that 65% of the equipment and services purchased during the first year of the contract would be purchased from Lucent. The percentage increased to 70% thereafter. (PX 123 at ¶ 11.3(b)(1)). The Supply Agreement also permits Lucent to surcharge Winstar if Lucent funds the purchase of goods and services from other vendors beyond the applicable percentages. There was no evidence to suggest that Lucent ever surcharged Winstar despite the fact that the parties agree Lucent funded substantially more non-Lucent purchases than percentages set forth in the Supply Agreement.

29. To assure that the content of the Winstar network was primarily equipment manufactured and/or sold by Lucent, to develop and enhance its reputation for providing these type of buildout services in a "hot" telecommunications world, and ultimately to enhance its revenue production, Lucent wanted to build Winstar's entire global network, including all supporting infrastructures, on a completely turnkey basis. Consequently the Supply Agreement provided that Lucent would build and deliver a turnkey operation to Winstar. As with its obligations to finance Best of Breed equipment even if supplied by third parties, if Lucent itself was unable to perform the services needed to comply with buildout obligations, it was obligated to finance the payment of those services provided by others who would develop the turnkey system. (PX 123, section 11.3(c).

30. When the parties entered the Supply Agreement, they both recognized that Lucent did not have all the core competencies necessary to perform the buildout. Therefore the Supply Agreement provided that Lucent would prepare a transition agreement that included a schedule of its assumption of various aspects of the buildout as broadly outlined in the Supply Agreement. (PX 123 at Schedule A, § 3.3). No transition agreement was executed and it quickly became apparent that Lucent either could not or would not take over the building of the turnkey network as promptly as anticipated. (Kantor, Video-Cross at pp. 46-48).²⁴ In March 1999 Lucent and Wireless entered into the Subcontract, effective January 4, 1999, whereby Wireless agreed to act as Lucent's subcontractor and build the network at least until such time as Lucent was willing and able

²⁴The transcript of Kantor's videotaped deposition testimony is Joint Trial Exhibit 1.

to assume that role. (Revised Joint Stipulation ¶ 7). Wireless would perform the services, many or most of which were the types of service it had already been performing directly for Winstar, as Lucent's subcontractor and then bill Lucent.²⁵ Lucent, in turn, would bill Winstar which would pay Lucent by drawing down under the First Credit Agreement or, after May 2000, the Second Credit Agreement. In essence Lucent loaned Winstar the money to pay Lucent for building the network; Lucent then paid the money over to Wireless. The paperwork, especially the purchase orders, were exchanged after the work was completed. It is Lucent's refusal to pay for services for the month of March 2001 that gives rise to the Count Seven, the breach of the Subcontract claim.

31. As Winstar grew and required additional financing to feed its insatiable appetite for cash to grow its business, it sought bank financing and in May 2000 arranged for a consortium of bank lenders, with Bank of New York as the administrative and collateral agent, to provide a \$1.15 billion revolving credit and term loan (the "Bank Facility") for part of its working capital needs. WCI Capital Corp ("WCI Capital"), one of Winstar's subsidiaries, was the borrower; Winstar and certain other of its subsidiaries were guarantors.

32. The First Credit Agreement, pursuant to which Winstar had borrowed approximately \$1.2 billion, was paid off with a portion of the proceeds of the Bank Facility

²⁵Lucent attempted to portray this arrangement as a scheme perpetrated and controlled by Winstar to enhance its own financials through questionable accounting practices. The Court disagrees. While there is evidence to suggest that this arrangement gave Winstar the means to capitalize many of its network buildout expenses, most of these expenses could be capitalized even without flowing them through Lucent. (Harris, Depo, Tr. 11 at 47).

and other funds raised by Winstar. Lucent released its lien in Winstar's assets. (Revised Stipulation ¶ 8).

33. Winstar also had raised money in the public debt and equity markets over the years. (DX 701 at 26 and 48).

34. As Winstar was growing and building out a global telecommunications network, it was purchasing millions of dollars of equipment from Lucent. Lucent desired to keep its good customer relationship with Winstar and thus in May 2000, simultaneously with the execution of the Bank Facility and repayment of the \$1.2 million owed under the First Credit Agreement, the parties entered into the Second Credit Agreement whereby Winstar received from Lucent a \$2 billion line of credit with the ability to borrow up to \$1 billion at any one time. WVF-I LLC ("WVF-I"), a newly formed subsidiary of Winstar was the actual borrower;²⁶ Winstar and WCI Capital, the borrower under the Bank Facility, were the guarantors. (DX 38). Among other things, the Second Credit Agreement permitted WVF-I to purchase both Lucent and non-Lucent equipment and in exchange WVF-I granted Lucent a security interest ahead of the Bank Facility only in the equipment Lucent financed. Lucent also took a security interest in WVF-I's "general intangibles" and "proceeds." The Second Credit Agreement also contained certain financial covenants, including a covenant

²⁶The Second Credit Agreement contemplated the future formation of other Winstar subsidiaries to act as borrowers under the Agreement. Subsequently WVF-LU2 LLC ("WVF-LU2") was formed and was also a borrower under the Second Credit Agreement. It also acquired equipment with funds borrowed under the Second Credit Agreement and gave Lucent a security interest in that equipment. WVF-LU2 is the entity that requested the March 30, 2001 borrowing in the amount of \$62,050,743.00. (DX 668). The parties, however, refer to the request as Winstar's request and throughout the conduct of this case did not draw distinctions as to which Winstar entity actually made the funding request.

that Winstar not permit its total Cash Capital Expenditures ("CAPEX") to exceed \$1.3 billion in "any year prior to and including 2001";²⁷ and entitled Lucent to serve a "refinance notice" on Winstar if the outstanding loans exceeded \$500,000,000. It also provided that any increases in the Bank senior loan arrangement would be used to repay Lucent. It is a partial repayment made to Lucent pursuant to the Second Credit Agreement, using funds from the so-called Siemens Transaction, that gives rise to Count 10, the preference claim.

35. Winstar repeatedly and knowingly helped Lucent by making massive, last minute, allegedly unneeded purchases that were arranged by Lucent as the ends of quarters approached. These end of quarter deals enabled Lucent to report more revenue

²⁷The Second Credit Agreement contained other financial covenants including the obligation that Winstar give Lucent Winstar's financial information signed by an officer who was to certify that the financial statements were kept according to generally accepted accounting principles and that Winstar was in compliance with the Credit Agreements. Moreover each draw request under the Credit Agreements was considered an independent certification that Winstar was in compliance with the covenants. At trial Lucent sought to introduce evidence regarding breaches of these covenants but because Lucent did not raise these issues in the Joint Pretrial Memorandum, the Court refused the introduction of such evidence. Lucent did make an offer of proof that it did not consider it its responsibility to verify the certified draw requests. Even if the evidence of these breaches was properly before the Court and even assuming that Winstar, in fact, breached these additional covenants, the outcome would be no different. As discussed *infra*, Lucent cannot divert its own independent knowledge of Winstar's true financial condition, including its complicity in trying to help Winstar meet the CAPEX requirement, by hiding behind Winstar's alleged breaches.

In addition the Second Credit Agreement also contained express covenants dealing with foreign collateral, EBITDA, and transaction fees. Again because Lucent did not raise these issues in the Pretrial Memorandum, the Court refused to consider evidence of these alleged breaches. But again, given Lucent's knowledge of the state of Winstar's affairs, it cannot feign that it was somehow deceived.

and appear more profitable in its quarterly public reports than it really was.²⁸ In fact the dollar amount of Winstar's purchases of Lucent equipment in end of quarter sales was on average eight times as high as the dollar amount of Winstar purchases of Lucent equipment in months in which a quarter did not end. Lucent used these end of quarter deals to close its own revenue gaps.

36. In addition to the end of quarter deals, Winstar helped Lucent record revenue through alleged accounting schemes such as improper bill and hold deals,²⁹ whereby Winstar would pay for goods that it did not need, often were not identified with any kind of particularity, and frequently never even left the Lucent warehouse. The Trustee alleges that the Software Pool Agreement, dated September 29, 2000 (PX 323), whereby Winstar was to pay Lucent \$135 million, in four equal payments of \$33.75 million to be made in January, March, June, and August 2001, for software it did not need, did not use, and had a fair market value of substantially less than the contract price was another in a series of sham transactions that were designed to do little more than inflate Lucent's revenue.³⁰

²⁸As discussed in greater detail below, the distortion of Lucent's financial picture lead to an SEC investigation that resulted in the commencement of a lawsuit for alleged violations of various securities laws against Lucent, several of its former employees, and three former employees of Winstar.

²⁹Bill and hold sales are transactions in which a party sells goods to another party but, at the purchaser's request, stores the goods in the seller's facility for shipment at a later date.

³⁰Winstar could not use funding from the Second Credit Agreement to pay for its purchases under the Software Pool Agreement. (PX 323 at ¶ 6 "Winstar agrees that it will maintain sufficient cash on hand to meet the above-described payment obligations at the respective Invoice Dates independent of any financing arrangements in place between Lucent and Winstar.")

37. The actions of Lucent in allegedly forcing Winstar to enter into transactions such as the end of quarter purchases, bill and hold deals and the Software Pool Agreement, as well as Lucent's alleged delay in negotiating a transition agreement during the later part of 2000 in order to gain leverage over Winstar and its alleged delay in issuing the refinancing notice in order to improve its position viz a vie other creditors, give rise to Count 11, the claim of equitable subordination.³¹

Summary of Lucent's Counterclaims

38. One of the covenants of the Second Credit Agreement required Winstar's CAPEX to not exceed \$1.3 billion in any year prior to and including 2001. It is Winstar's alleged CAPEX in excess of the \$1.3 billion limitation, its behavior to bring its CAPEX into compliance, its failure to undertake inquiry regarding its CAPEX, and its certification in each borrowing request that all covenants have been or would be met by the time of the borrowing that give rise to both Lucent's counterclaim for fraud, Counterclaim 5, and its counterclaim for negligent misrepresentation, Counterclaim 6.

COUNT VII: BREACH OF THE SUBCONTRACT

³¹ In Count XI of her Second Amended Complaint, the Trustee alleges that the Siemens loan is the transaction which give rise to her request for equitable subordination and seeks return of the Siemens loan proceeds and subordination of Lucent's claim. At trial the evidence of Lucent's alleged impermissible conduct was much broader and therefore, to the extent necessary, the Second Amended Complaint is deemed amended to conform to the evidence as such amendment in no way prejudiced Lucent's rights. See Fed. R. Civ. P. 15(b), made applicable by Fed. R. Bankr. P. 7015(b); *see generally* 6A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §§ 1491, 1493 (1990 & Supp. 2003). In fact the parties themselves agreed at the end of the trial that their pleadings should be deemed amended to conform to the evidence (which would not include any of the offers of proof) as long as neither party added any new claims, counterclaims, or defenses. See Tr. 21-135-140.

39. The Trustee contends in Count Seven of the Second Amended Complaint that Lucent breached the Subcontract between Wireless and Lucent, thereby causing Wireless \$62,050,742.00 in damages. Lucent responds that it was not required to perform under Subcontract because there was no "task order" for the work performed.

The Subcontract and Task Orders, Purchase Orders, Invoices and Spreadsheets

40. The Subcontract expressly provides:

1.1. Services. Contractor agrees to perform for Lucent the tasks, responsibilities and services described on the attached task specific schedule(s) (individually a "Task Order") (the "Services"). The parties may enter into future Task Orders, to which the parties agree, from time to time, with each Task Order to be consecutively numbered and attached hereto. Services shall be provided in accordance with the provisions of this Agreement and the applicable Task Order and shall be on either a firm, fixed price or time and materials basis as specified in the applicable Task Order executed by both parties.

1.2. Task Order. Unless otherwise agreed by the parties in writing, each Task Order will include the following information: (i) a description of the Services to be performed; (ii) the targeted commencement and completion dates of the Services; (iii) a list of deliverables to be provided by Contractor (the "Deliverables") and targeted delivery dates; (iv) methods of compensation to be provided to the Contractor (e.g., time and materials, firm fixed price or otherwise) and other appropriate pricing terms such as hourly rates; and (v) other information the parties agree to include.

41. Even though the Subcontract called for Winstar to submit task orders to Lucent prior to Wireless's provision of services, the parties ignored this requirement and between January 1999 and October 2000, Lucent paid Wireless approximately \$325 million for

services performed under the Subcontract, most, if not all, without a prior written task order. In fact the parties agree that after the first quarter of 1999 they never exchanged a single task order (Revised Joint Stipulation ¶ 20).³² Nathan Kantor, Winstar's President and Chief Operating Officer when the relevant agreements, including the Subcontract were negotiated and approved, testified that it was his understanding that Lucent and Winstar agreed that the invoices would function as the equivalent of the task orders. (Kantor, Video at 356-57). "The contract was administered by using the invoices and a Lucent

³²The task order for that first quarter, dated January 4, 1999, was not actually executed until March 1999 when the parties also executed the Subcontract (Wilson, Tr. 16, 105-06) and this document, which the Defendant describes as the only task order executed, is actually a letter, dated January 4, 1999, from Lucent's Vice President of Emerging Services to a Winstar employee that reads as follows:

Pursuant to our recently executed *Agreement for Network Build-out Services*, please accept this letter as my authorization for the subcontracting of Network Services from Winstar Wireless, Inc.

The following is a list of services, which Lucent will subcontract to Winstar for an amount not to exceed \$25 M for the period January 1, 1999 through March 31, 1999 [:]

- Switch Site Planning & Construction
- Hub Site Planning & Construction
- Broadband Riser Engineering
- Inside Wire engineering
- Network Integration (CO & Hubs)
- Network Integration (B Sites)
- Site Surveys
- Site Acquisition

Thank you in advance for your support.

(First page, bearing Bates Stamp WC0019778, of DX 117). Even this "task order" is devoid of the details that Lucent argues must be present for a writing to comply with the Section 1.2 of the Subcontract and be considered a "task order."

purchase order to reflect these task orders and the work that was performed by Winstar to Lucent and agreed to by Lucent and those invoices were paid for several years." (Kantor, Video at 361-62).

42. Yet if the letter dated January 4, 1999 is a task order, the parties quickly dispensed with the task order process, opting instead to exchange less formal documentation, including purchase orders, invoices and spreadsheets summarizing Wireless' charges. Generally Winstar sent a purchase order to Lucent which, in turn, sent a purchase order to Wireless. Wireless performed the services and then sent Lucent an invoice, with or without an accompanying spreadsheet showing the breakdown of services or goods. Lucent then invoiced Winstar in the same amount as Lucent was billed by Wireless. Then, as described above, Winstar would draw down under the applicable Credit Agreement, use the draw to pay Lucent which would then pay its obligation to Wireless. In fact, Richard Uhl, Winstar's former Chief Financial Officer provided credible testimony about how payments were sought and obtained, as well as the underlying reason for dispensing with formal task orders.

Well, Lucent, the original agreement required that Lucent issue purchase orders. Early on it was discovered that Lucent was unable or not capable of defining what should go into the purchase order. So the practice evolved, in fact, was present when I became CFO in the fall of '99 that inasmuch as Lucent could not produce the details of the purchase order, Winstar Wireless would as its subcontractor to Lucent issue an invoice which Lucent would then cover with a purchase order and that was the sequence. That was the sequence present and existing when I assumed responsibility for Chief financial Officer's position in the fall of 1999.

(Uhl, Video-direct at 11).³³

43. Shortly after entering the Supply Agreement, Lucent began to balk at the arrangement and as early as June 1999, Lucent threatened to pull the plug. Shortly after entering the Subcontract, Lucent determined very quickly that the pass-through payment arrangement "yielded no material benefit for Lucent, and in fact cost [Lucent] considerable resources to process, track and manage." (DX 163; *see also* Wilson, Tr. 18-30). Lucent could not recognize revenue on the pass-through transaction because it did not have sufficient control over the services being performed by Winstar's employees to allow revenue recognition under the accounting rules. (PX 388 at LW 00303141; DX 523; *see also* DX 155 at 2WC 0016320.) Lucent was also concerned that financing any additional services would hamper its ability to sell Winstar's loans because the banks it consulted with concerning such financing were "very negative on the inclusion of these incremental services." (DX 149 at WC 0118574; *see* Wilson, Tr. 16-28-29; DX 155; *see also* DX 137.) And Lucent was attempting to sell the Winstar loan as it was among the largest loan Lucent had financed. (Hayes, Depo, Tr. 13-33). Consequently in early June 1999, even though Lucent was still unwilling or unable to build the turnkey operation as required under the Subcontract, it informed Winstar that it would not pass through any additional services because it was "concerned about having to severely discount the paper to sell it." (DX 154.)

³³The transcript of Uhl's videotaped deposition testimony is Joint Trial Exhibit 13.

44. Quickly discussion escalated to the chief executive level and ultimately Lucent agreed to continue the arrangement and it did so up until March 2001 when Lucent refused to pay for the previously rendered services ostensibly because there was no task order.

45. Lucent ultimately agreed to finance Wireless-performed services and facilitate the favorable accounting treatment that Winstar desired by passing through the 2Q1999 services. (Wilson, Tr. 16-54.) Lucent only did so as an accommodation to Winstar, which claimed that ending the pass-through would have negative financial repercussions and which promised to negotiate a true turnkey approach to services that would allow Lucent to recognize revenue on such services in the future. "[T]here was a large pressure from Winstar to go ahead and [pass through services because Winstar] felt like it would have implications on their earnings report since they were capitalizing these services last quarter, and had it not happened this quarter it would reflect badly on their announcement." (*Id.*) Therefore, Lucent agreed to pass through Wireless-performed services in 2Q1999 "with the agreement from Winstar that [Winstar and Lucent] would pursue a business arrangement structure around a turnkey approach to the projects and network implementation that would then, again, well define the tasks for each company to perform, orders up front from Winstar to Lucent, Lucent then going through those task lists and ordering back from Winstar what we could not perform." (*Id.*; see also DX 164.)

46. On September 8, 2000 Winstar issued a purchase order, WVF 1-00000002958 (See also DX 390 and 391 referencing Lucent's position with respect to the September 8th invoice) that in line item number 1, sought payment of \$65,509,331.00. But

by this time Lucent was not inclined to increase the Winstar loan. In fact, Lucent was seeking to rid itself of some or all of this debt. At about this time Lucent was seeking to sell the Winstar loan. In mid-September 2000 Deborah Hopkins (Lucent's CFO), Rich McGinn (Lucent's President and CEO), Fred Rubin (Lucent's Treasurer and Senior Vice President), Richard Uhl (Winstar's CFO), and William Rouhana (Winstar's CEO) met with senior officers of the Bank of New York at a luncheon meeting at the Water Club. One of the goals of the meeting was to get the Bank of New York to buy the Winstar debt. The deal was not consummated as the financial market collapsed on the same day as the meeting. (Uhl, Video 282-83).

47. On September 21, 2000 Deborah Harris and William Plunkett of Lucent had a conversation with David Ackerman and Richard Uhl of Winstar and informed them that Lucent would not pay the \$65,509,331. The next day Deborah Harris followed up the conversation with an email and a letter (PX-15) which reads in part:

At the signing of the supply agreement certain services in support of the Winstar network deployment were described as potentially being performed by Lucent Technologies. The actual assumption of these services was contingent upon the development and successful execution of a transition plan for services that Lucent and Winstar agreed were Lucent competencies and could be successfully executed by Lucent.

There is a category of services which, to date, Winstar continues to provide for itself...

We have been pursuing ways to take on these services in a manner agreeable to all parties, but have not been able to reach consensus. Consequently, we believe it is not

appropriate for Lucent to accept Purchase Orders for these services. Specifically, we must reluctantly reject line item # 1 of the Purchase Order for \$65,509,331.00, WVF 1-00000002958 issued by Winstar on September 8, 2000. Lucent stands ready to negotiate an arrangement under which Lucent becomes responsible for some or all of these services, whether via outsourcing or some other method. We suggest that Lucent and Winstar each designate an empowered team to move ahead with these negotiations with the goal of completing by October 1, 2000. If you agree with this suggestion, we are ready to start immediately beginning with a kickoff meeting next week.

48. At the time of the Harris letter, Lucent, however, had still not developed the core competencies needed for it to assume the buildout by itself. The suggestion that Lucent was ready and willing to perform the buildout and would do so but for the failure of the parties to agree to a transition plan was nothing more than an attempt to create a pretext for denying further draws under the Second Credit Agreement so that Lucent could renegotiate the terms of the "strategic partnership" for its benefit.

49. In fact, Lucent's demands for a financial concession had already begun by the time of the Harris' letter as had its pressure on Winstar to help Lucent make its end of quarter numbers as reflected in a September 18, 2000 email sent on Harris' behalf.

Nina and Bill:

I have tried to do a very brief summary of all the "good, bad and ugly" on this account. Bottom line is that to do an EOQ [end of quarter] deal, we need Nate to provide direction to Ackerman and Uhl that this will take place. They are vehement that they are out of money and do not want to spend money on product that they can not immediately utilize. The deals of the past are haunting us...there is \$87M in their warehouses. But much of this is also due to problems with Williams.

We have a restructured proposals that categorizes what they need now through to long term. Definitely the majority of the money we are asking for is not for immediate use. It also includes pricing for the B's and Hubs which is 2 tiered, and time sensitive. Depending on how fast we can implement and identify cost reductions thru [sic] the breakthru [sic] items, could cause our BGP to hover around 30% or below.

What I need are 2 things:

1. **A call to Nate Kantor getting agreement to move forward on an EOQ deal.** Our meeting with Dave Ackerman is first thing Tuesday morning, so this would need to happen today. We believe they already will be spending around \$46M with us, so we are asking for another \$50-60M. (I am trying to get the total number in the \$110-115M range).

2. Agreement that we can discuss at 5:15 today, on the aggressiveness of the proposal.... (PX 86)(emphasis in the original).

50. The same email transmission further supports a finding that Lucent was not only pressuring Winstar to do deals that were designed to benefit Lucent at Winstar's expense but conspiring to ensure that the lucrative to Lucent end of quarter deals got done.

Following are the "headlines" for the Winstar account:

- **Winstar Services:** We pass through around \$67M/Q of WinstarServices. We have been told to stop this practice. We will be communicating our position to Winstar the week of 9/18, including options of what portions of these services we can do . **We may want to delay this move for a quarter based on this EOQ deal.**

- **Previous EOQ Deals:** ...
 - Winstar does have major inventory as a consequence of these deals.

- Credits provided in all the previous EOQ deals are now hitting in 4Q2000 results.... (PX 86) (emphasis added).

51. Aversano placed the call to Kantor and, despite Winstar's financial condition, the deal was done. (Aversano, Video Tr. at 8). As Kantor subsequently wrote to Aversano, "Great to talk to you and we will help whenever possible." (PX 157). Kantor then instructed Ackerman to make the Lucent deal, which ultimately turned into a deal for \$212 million in end of quarter purchases, happen. (PX 56).

52. Yet as David Ackerman wrote to Kantor in a September 18, 2000 e-mail, in view of Winstar's CAPEX Issues, complying with Kantor's instructions to provide substantial revenue to Lucent would not be possible unless Ackerman got "creative:"

I just spoke with [Lucent employee Bill] Plunkett. He informed me that you and Nina [Aversano] had met (dinner?) and you agreed to help them get to the number they need this quarter ... something around \$110M, of which we've already spent about \$45M. There is not much I can give them that we really need, but there are some creative things I can do that can get us close to their number without being totally stupid.

Thus; we are working to cut another \$70 [Million] in addition to the \$117 [Million] [to meet capex covenants]. This means stopping ANY and ALL incremental spends for ANYTHING capex immediately, and letting capitalized contractors go . . .

How much capital CAN I REALLY SPEND THIS YEAR, and how much do I do to give Lucent what they need for 3Q?

If the answer is; both give Lucent the business, AND reduce the cap spend to \$1B even I will need to institute some very severe measures immediately.

(PX-127) (Emphasis in original).

53. After receiving a copy of the September 22, 2000 email and letter, Nate Kantor, Winstar's President and COO, sent the following email to Nina Aversano, President of Lucent's North America group (PX-16):

I am very surprised and disappointed with this-we've only discussed it a million times. This doesn't sit well with me and will have a major impact on our ability to help you this quarter.

You've got to get this fixed.

54. On September 25, 2000 James Cocito, Lucent's chief operating officer of its North America Region, sent Frank Manzi an email suggesting that Lucent consider the possibility of "a one more time' strategy." (PX 88). As Cochito noted in his email, "[Kantor] has indicated there will be no deal for the QTR unless this gets fixed. Impact about 60M or more. Also, I will know as of this morning whether they are going to play with the AR as well."

55. On September 27, 2000 Nina Aversano, President of Lucent's North America Region sent Richard Uhl, Winstar's CFO,³⁴ a letter (PX 17)³⁵ that purported to modify the terms under which the two companies did business and containing the conditions under which Lucent would pay the September 8, 2000 Purchase Order.

³⁴The letter is addressed to Uhl but contains the salutation "Dear Nate."

³⁵The same document is also a Defendant's exhibit (DX 424).

This is to inform you that Lucent will accept your purchase order WVF 1-0000002958 [sic] conditioned upon Winstar's agreeing to the following terms and conditions. If you agree, kindly sign in the space provided below and return to me. Immediately. Note, this is a great opportunity for us to move our relationship forward to what we envisioned-a seamless partnership where the many resources of Lucent can be utilized to help achieve Winstar's business plan. I hope you agree with me that we should seize the moment.

It would appear that there has been a great deal of confusion between us regarding which services and to what extent services would be provided by Lucent to Winstar under our Supply Agreement dated October 21, 1998. Pursuant TO Schedule A of that contract the parties intended a transition plan for Lucent to take over services that at that time Winstar was providing to itself. This was a broad plan possibly leading to a full outsourcing of all Winstar required services to Lucent. Since the signing of that contract there have been a number of attempts to formalize this broad services relationship. The last such attempt was undertaken this past June when the parties entered into two addenda- the Hub and B-Site Addendum [PX-18] and the Optical Network Addendum [PX-19]. These addenda did not include the full range of services contemplated in the Supply Contract.

I'm sure you would agree that the fault for the failure to execute on our original concept lies with both Winstar and Lucent. Happily it appears we both favor the same result-a broad services relationship. We need to finalize that result as soon as possible so that our contractual relationship matches our mutual intent. We propose that commencing Monday morning October 2nd, or as soon thereafter as is reasonably possible, our two teams meet at your offices to finalize a broad services agreement. This would be a lock-up session to finalize a full service agreement no later than two weeks thereafter. Consistent with the principles already established in our two addenda referenced above, Lucent would have complete control of the work covered by the scope of work the parties mutually define in this new agreement. Lucent may either perform the work itself by acquiring expertise and personnel from Winstar, or subcontract some or all of it to third parties (including Winstar). Consistent with this model, commencing

October 1, 2000, Winstar would perform this work only upon prior receipt of a mutually acceptable written purchase order from Lucent (and not at its sole initiative). Should this process not be followed, Lucent would not be able to accept purchase orders or invoices for any Winstar performed services that are outside the scope of work defined in this agreement.

Further, until this new service agreement is in place, Lucent will not be able to accept purchase orders or invoices for services performed by Winstar after September 30, 2000 that are either outside the scope of the two addenda referenced above or that fall within the scope of the new, as yet unexecuted, service agreement. Prior to Winstar performing any work that might rightfully fall within either of the two existing addenda referenced above, Lucent would need to issue mutually acceptable written purchase orders. Should this process not be followed, Lucent would not be able to accept purchase orders or invoices for any Winstar performed services presumably on Lucent's behalf.

I look forward to your prompt reply, and the further growth of our relationship consistent with our shared vision....

56. Uhl signed the letter thereby acknowledging his assent and returned the same to Lucent. Uhl did not understand this letter to terminate the original agreement in the event the parties were unable to enter into a new agreement. (Uhl Video-direct at pp.16, 18, and 19). Kantor understood that Lucent's financial people were demanding a letter because they needed to book revenue. (Kantor Video-direct at 180-81).

57. In addition to Uhl's signing the letter, Lucent extracted another and even more substantial financial concession from Winstar when, on September 29, 2000 the parties executed the Software Pool Agreement (PX 323). Under the Software Pool Agreement Winstar purchased \$135 million of unneeded software. The transaction was simply a sham, however. Its purpose was to inflate Lucent's end of quarter revenues. To that end,

the Software Pool Agreement was successful: it alone accounted for 26% of Lucent's profits that quarter. (DX 739 at ¶ 60).

58. The end of quarter deals for the third quarter of 2000 committed Winstar to make approximately \$212 million in purchases and forced Winstar out of compliance with the CAPEX covenant and over the \$500 million refinancing threshold. (Ackerman Video at 605-08 and 666-69; PX 43; PX 57; PX 78; PX 107; PX 148).³⁶

59. Lucent's initial software proposal was for a much smaller amount — \$25 million — but in less than nine days, with Kantor's promise to Lucent that Winstar would help "wherever possible," the pool expanded approximately five-fold to the \$135 million figure. (PX-57; PX-323, Zlotnick Video-direct at 157). This increase occurred without the numerous internal studies or any of the other planning documentation that Mr. Pocalyko testified were typical. (DX-702; Pocalyko Tr.3-41-42). As Lucent's Deborah Harris advised on September 22, 2000, "I know the overall Software request will be a surprise and that is an area where a conversation will be of (PX-52). benefit."

60. As part of this software pool transaction, the parties also agreed that Lucent's list pricing for the software, rather than Winstar's contractually-reduced pricing, would be used to further boost Lucent's revenue. (PX-53; PX-349). As Winstar executive William Zlotnick

³⁶Lucent was well aware of the CAPEX problem. Lucent proposed the Software Pool Agreement, which called for all payments to be deferred until 2001, as a way to commit funds to Lucent without further increasing Winstar's capital expenditures. (Zlotnick Video-direct at 156; the transcript of Zlotnick's testimony is Joint Trial Exhibit 3).

testified, the software deal was ultimately priced "at whatever Lucent needed for its revenue." (Zlotnick Video direct at 160-61; PX-79; see also PX-57). Of the \$135 million of software, less than \$20 million was of value to Winstar. (Zlotnick Video-direct at 169-71). In fact, in post-deal documentation Lucent took the position that Winstar was only entitled to select \$20 million of software — and would have to pay extra if it wanted more — despite Winstar's obligation to pay \$135 million in cash in 2001. (PX-54). Lucent later recanted this position.

61. To enable Winstar to make the required cash payment for the software, the companies agreed to enter into contracts for credits postdated after September 29, 2000 and payable in the fourth quarter of 2000 (*i.e.*, before Winstar was obligated to actually make the software payments to Lucent). (PX-54; PX-57; PX-186 at internal tab 2; PX-324; PX-462 at 37; Rubin 2003 152:15 — 154:11).

62. On behalf of Winstar, Ackerman signed the post-dated credit agreements, enabling Lucent to book almost the entire amount of the software deal as revenue in Lucent's final fiscal quarter of 2000 (September 30, 2000). (PX-167; DX-739). Thus, Lucent funded Winstar's purchase of the unnecessary software in advance, to obtain Lucent's September 2000 revenue and profit infusion.

63. Shortly thereafter Rouhana, Winstar's Chairman and CEO, informed Schacht, one of Lucent's directors and who, as of October 23, 2000, resumed his previous position as CEO of Lucent, about the financial improprieties between the companies. Lucent retained its outside counsel to investigate its accounting procedures. The investigation resulted in Lucent's reversal of the revenue recognition from the Software Pool Agreement

and a shake-up of the company's accounting staff. (Schacht, Tr. 21 at 33-35).

64. The Securities and Exchange Commission ("SEC") also conducted an investigation that ultimately lead to the SEC's filing a civil complaint against Lucent, certain key Lucent employees, including Deborah Harris, who as Vice President of Sales assumed responsibilities for the Winstar account in August 2000, and Plunkett, a member of Lucent's management team overseeing the Winstar account, and former Winstar employee, David Ackerman, a "Group Executive" responsible for the build out of Winstar's network. A criminal investigation is still ongoing. When deposed as part of the SEC, both Harris and Plunkett refused to answer citing their right against self-incrimination under the Fifth Amendment to the United States Constitution.

65. Lucent in fact terminated Mr. Plunkett for his involvement in postdating documents related to the software deal.

(Schacht Tr. 21-35). It did nothing, however, to terminate or otherwise punish fellow Winstar Sales Team members Deborah Harris, Vanessa Petrini or David Rigotti, all of whom remained active on the Winstar account into 2001, and who were clearly culpable in the scheme to fraudulently post-date the deal documents. (See PX-73; PX-66). Thus, while Mr. Plunkett became the scapegoat, the transaction remained in place, and the other Lucent participants remained active on the core Winstar sales team. (Schacht, TR. 21-29:3-21, 21-33:13-17, 21-35:7-14).

66. Soon after sending her September 27, 2000 letter Aversano was relieved of her duties at Lucent and formally left Lucent in December 2000. (Aversano Depo, Tr. 8-22-24.). When she left, the parties had not executed a transition agreement nor had they resolved the ongoing problem of payment of the pass-through requests.

67. During this same time period Lucent was experiencing its own revenue crisis and was attempting to reduce its exposure on loans it was financing. (PX184). By at least mid October 2000 it drafted, but did not send, a refinancing notice as Winstar's outstanding borrowing exceeded the \$500 million trigger. (Hayes, Depo, Tr. 13-40; PX 185 ("Per the email below, we are planning to issue a Refinancing Notice to Winstar next week.")). Lucent was well aware of the impact sending such a notice could have. By email dated November 2, 2000, Paul Hayes, Lucent's Director of Syndication and whose job was created in late 1999 or early 2000 specifically to manage the process of removing loans from Lucent's books, circulated a memorandum from Beth Perricone addressing the implications of sending a refinancing notice to Winstar. (Hayes, Depo, Tr. 13-31; PX 187). That memorandum provides in part:

Paul and I have studied the implications for Winstar and Lucent of issuing a refinance notice....

IV. Implications of Issuing a Refinance Notice:

Option 1-Issue a written 105 day refinance notice for all or a portion of the Lucent Loan

Pros:

- Puts pressure on Winstar to seek alternative sources of capital (i.e. existing Bank Syndicate, Bondholders, Equity Sponsors, and Vendors);
- Forces parties to the table to deal with funding shortfall issues;
- Provides ability for Lucent to re-negotiate certain provisions, e.g. content requirements, limit non-Lucent content financing, eliminate Winstar pre-approval for Lucent loan sales, improve collateral position (i.e. pari passu with Bank Syndicate);

- Repayment by Winstar results in fresh \$1B of Lucent financing available for Winstar;
- Lucent can always rescind or modify the refinancing notice

Cons:

- Winstar is likely to immediately file 8-K to disclose material adverse event, disclosing the amount of the financing;
- Disclosure may result in details of Lucent's financing becoming public;
- Market rumors may further disrupt capital markets and deter new investors;
- Existing Winstar securities could suffer price deterioration, further impacting market appetite and further depressing price of Lucent Loans;
- Potential Rating Agency Implication for Lucent and Winstar;
- Potential increased cash flow requirement for Winstar, which would result at end of Refinance Period (90-105 days). If Winstar does not refinance, rate on Lucent Loan increases by 2% (i.e. a potential \$13.8 M in additional interest cost annually on current \$690 M of Lucent Loans). If Lucent chooses to convert its notes at the end of the Refinance Period, the Conversion Notes (a defined legal term) could carry a cash payment coupon as high as approx. 21% based on Winstar's current bond prices (i.e. a potential \$62 M of additional interest cost annually on current \$690 M of Lucent Loans)

Option 2-Meet with Winstar immediately and advise verbally of pending notice

Pros:

- Provides opportunity to negotiate right to sell up to \$300 M of Lucent Loans today if Lucent desires;
- Advise of refinance amount of 100% of Lucent Loans then negotiate a lesser amount if Lucent desires;
- Flush out any strategic options currently under consideration by Winstar;
- Extract other amendments (i.e. collateral, voting, assignments, etc.) and any additional economic concessions (i.e. rate, fees, warrants)
- Limit public disclosure and market impacts

Cons:

- Time is of the essence
- 105 days required for refinance
- Rumors still may permeate the marketplace

V. Conclusions:

- Lucent's ultimate negotiating position may be driven by our own perception of Winstar as a "going concern";
- If we believe they are a survivor than our primary concern might be limiting a loss of Lucent profits, i.e., discounting Lucent paper;
- To make the most informed Lucent decision we need better clarity from marketplace on capacity for Winstar debt/equity to make a more informed decision; A confidential discussion may begin immediately on this;
- Alternatively, do we perceive Winstar as completely locked out of the capital markets and absent a strategic investor? Should we be concerned about capital preservation and the impact to Lucent's balance sheet and credit rating?
- Ultimately our decision should be driven by where we think this is going. In our judgment, if the capital market disruption is temporary, i.e., 3-6 months longer; than [sic] Winstar is likely to survive.

68. By November 7, 2000 Lucent had apparently decided to delay issuing the refinancing notice when Beth Perricone again wrote in an email:

As you will see below there was a meeting of the minds at Winstar yesterday. Late last nite [sic] Bill Quinn and I spoke briefly to Peter for the outcomes of that meeting. Peter described 3 capital events about to occur:

- Bank group to provide for new term loan of \$200M to be supported via guaranty of Siemens. The proceeds of this loan are to paydown [sic] Lucent. Apparently Winstar will enter into long term supply agreement w/Winstar [sic] in exchange for their guaranty. Not sure how they will pay for Siemens gear if that facility is used to repay us??
- Winstar to enter into new \$275M capital lease w/Cisco

- Winstar to inject new \$25M of equity (term sheet to follow to Lucent)

This would bring our current exposure of \$690M down to \$490M or below the trigger amount. I am not clear from Peter whether we will issue refinance notice now, sounds like we are waiting.

Peter want complete due diligence done at Winstar so Quinn, Keller and I are coming up w/ a list today....(PX 188).

69. On November 10, 2000 Perricone sent yet another email in which she again recommended that due diligence of Winstar be undertaken to evaluate the impact of a refinancing notice prior to send such a notice. (PX 189). Lucent was clearly worried that the issuance of the refinancing notice would have dire consequences for Winstar. (Hayes, Depo, Tr 13-45). Nevertheless Hayes assuredly wrote in a November 16, 2000 email to Hunt-Majeau, "Sending the refinancing will not send Winstar into a financial 'tailspin,' and I will stake my bonus from this past year on it."³⁷ (PX 191).

70. In November 2000 Lucent commenced its due diligence of winstar's financial condition. As a result of the due diligence, Perricone recommended that Lucent lower Winstar's "Asset Quality Rating" or "ARQ" from 6 to 7.³⁸ (Perricone, Depo, Tr. 3-115).

71. Lucent replaced some of its key management in the fall of 2000 but it continued along a tumultuous path with employees in the sales and finance department continuing to have different goals and objectives. Although Lucent's upper management wanted to

³⁷ Hayes testified that the comment about staking his bonus on his opinion that the refinancing notice would not send Winstar into a tailspin was intended as a joke as Lucent did not offer bonuses. (Hayes, Depo, Tr, 13-89).

³⁸ The ARQ rated Lucent's borrowers on a scale of 1 to 10. The higher the rating, the higher the inherent risk of non-payment. (Perricone, Depo., Tr. 13-115).

extricate the company from the business of lending to its customers, or at least from Winstar, the pressure to have Winstar continue purchasing and building out the network continued. Indeed when Winstar did not behave as Lucent wanted, Lucent simply shut down any discussion of a transition agreement. Lucent continued to control Winstar throughout the course of their relationship, including in December 2000. Although their may have been periods when Lucent's control was less apparent or even relaxed, and indeed there were times when Winstar was able to extract concessions from Lucent, the fact remains that these parties were not dealing at arms length. For example, the bill and hold transactions were done at the request of Lucent (PX 462 at Exhibit N);³⁹ purchase orders are vague-often describing as "miscellaneous" a purchase of several million dollars (See, e.g., PX 462 at Exhibit H and I); the inflation of the Software Pool Agreement from \$31 million to \$135 million over the course of a 9 day period (PX 462 at Exhibit P).⁴⁰ There were also excessive end of quarter deals, unneeded equipment paid for by Winstar but sitting in Lucent's facilities, duplicate charges, and difficulty, to say the least, in getting

³⁹PX 462 is the Report of Paul Pocalyko who was retained as an expert by Winstar to render an opinion as to whether the transactions were arm's-length and if Lucent exerted undue influence and control. Lucent sought to exclude Pocalyko's testimony under *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579 (1993). Assuming for the sake of argument that *Daubert* is applicable in a bench trial, the Court denied the motion. (Tr. of March 16, 2005 hearing at 34-41) [Docket 322]. Although the Court continues to believe its initial ruling is correct, it has used Pocalyko's report only as a convenient vehicle to refer to relevant documents. The Court has not relied upon Pocalyko's opinions in reaching its decision.

⁴⁰The Software Pool Agreement prices the equipment at "list" price rather than the reduced price that the Supply Agreement provides.

credits correctly to Winstar's accounts.⁴¹ Winstar was and remained Lucent's captive purchaser of unneeded and sometimes unidentified goods to permit Lucent to inflate its own revenue.

72. By letter dated December 28, 2000 and addressed to Michael Montemmarano, Lucent's Vice President of Finance of Worldwide Sales and Marketing, (DX 558), Winstar

⁴¹Although the parties disputed these allegations, after weighing the credible evidence, including the documents appended to and compiled as part of the Pocalyko Report, the Court finds that the Plaintiff has proved that Lucent essentially dumped excessive amount of unneeded equipment on Winstar in order to inflate Lucent's own revenues. For example, excluding the \$135 million paid to Lucent under the Software Pool Agreement (which itself is another indication of the sham transactions Lucent devised to inflate its own revenues), Winstar made an aggregate of approximately \$706,000,000 in purchases from Lucent in calendar years 1999 and 2000. During this period the amount of Lucent equipment paid for by Winstar but sitting in Winstar's or Lucent's warehouses continued to increase so that by March 31, 2001 there was, on an adjusted cost basis, approximately \$327 million in those warehouses. Of that \$327 million in equipment, the overwhelming majority, indeed about \$256 million was paid Lucent equipment while \$71 million was non-Lucent merchandise. And needless to say, the valuation of the Lucent equipment at \$256 million on an adjusted cost basis is less than that actual amount paid to Lucent by Winstar for that equipment.

Moreover closer examination of the facts relating to the warehoused equipment purchased from Lucent reveals that of the approximately \$256,000,000 (on a cost adjusted basis) of Lucent equipment in Winstar inventory in warehouses as of March 31, 2001, approximately \$74 million of the \$256 million of Lucent equipment could be specifically traced as to the original date that Winstar purchased such equipment from Lucent. Of that \$74 million of Lucent equipment, approximately \$36 million (on a cost adjusted basis) of that equipment was purchased by Winstar in a December 31, 1999, end of quarter bill and hold sale and remained in a Lucent warehouse undeployed for 15 months as of March 31, 2001. In fact once Winstar paid for Lucent equipment, it was not unusual for some of that merchandise to sit in a warehouse for more than a year.

sent Lucent a request to borrow \$62,324,930.00.⁴² Accompanying the letter was a one page "analysis" captioned:

Winstar Telecommunications, Inc.
Lucent Billing for Capital Labor
Q1 2001 Estimate

The chart lists the departments which provided the services under three general headings: "Winstar Systems Group," "Winstar For Buildings," and "Winstar Network Services." Each general heading is followed by a specific list of what appear to be the various departments which rendered services, along with the total of "internal," "external," and "Lucent billable" labor costs incurred by each department for the months of October, November, and December (for which month the figures are estimates) of 2000.

73. On the evening of December 27, 2000 Montemaranó sent an email (included as part of PX 199) to several Lucent employees, including Ben Verwaayen, Lucent's Vice Chairmen, and Hopkins, Lucent's CFO, which reads in part as follows:

Based on a call today from winstar [sic] chairmen, president and CFO we took the following position as articulated by Ben. We could "allow" winstar [sic] to use the credit facility to fund their services for this quarter. We would not engage in any billing/po's between the companies, but they could and do intend to draw down the facility for about 65M [sic]. This is money out the door for us.

We agreed that the 35m [sic] credit granted in 4qtr can be used as a reduction to their outstanding credit facility. It would not be dispersed as cash to them, but we [sic] go against the credit facility as "repayment."

They also indicated they had presented a draw down last week of 32M [sic]. Ben asked them to reconsider this given the extremely low lucent [sic] content.

⁴²The letter requests that the funds be wired to WCI Capital Corp.

I will work this tomorrow with their CFO and plan to ensure they adequately document cash draws. In addition, Ben asked the CT [customer team]⁴³ to set up a meeting with winstar to get the relationship to a new level where both companies benefit.

74. The next morning Lucent's CFO sent the following reply via email (also part of PX 199):

WE HAVE ALREADY SAID no TO THE SERVICES FUNDING.

75. A few hours later, Verwaayen emailed (also part of PX 199) the following:

Well, after a read out from the lawyers and after reviewing the options with everybody on our pre call yesterday, Winstar can draw down upon the credit facility, including services. We did push back on credits (no cash, but off setting a/r's) and the 30 million request that came in Friday. We really had not the option of denying their rights here. In reality, we can make their lives miserable for a couple of days, but they have an open line and that is what we have to change. So what we did, after all agreed in our pre call is to create a basis for a fundamental resetting of this relationship. We will create from both sides a wishlist how to recreate our legal platform working together and renegotiate on those issues. I think we all understand how much better we are and how to get out of this situation going forward. We want to make this a profitable account with clear rules of engagement.

76. But as suggested in the December 29, 2000 email Ben Verwaayen sent, Lucent had used its influence over Winstar to set the stage for the new negotiations.

Now we have positioned ourselves for a major overhaul of our relationship with Winstar, I think we should involve our partners in treasury and Legal in preparing a model for our negotiations

⁴³Hayes, Depo, Tr.13-63.

on Jan 9 or 10.... (PX 261).

77. On the evening of January 5, 2001, Elizabeth Perricone (who was not copied on the above series of emails) sent an email (PX 119) which reads in part:

Financing of Services on 12/29/00:

Given our agreement to finance services on 12/29/00, legal feels it would be prudent to send Winstar a letter confirming this was a borrowing under the Credit Agreement as an accomodation [sic], and we reserve the right not to make loans for any such purpose in the future.

78. On March 27, 2001 Winstar faxed to Lucent a notice of Winstar's request to borrow \$62,050,743.00 effective March 30, 2001. (DX 668). The draw request is on Winstar letterhead and is captioned "Notice of Request for Borrowing." The Notice states that the request is given "[p]ursuant to Section 2.03 of the Credit Agreement" and contains a certification "that all conditions for borrowing set forth in Section 4.03 the [sic] Credit Agreement have been satisfied or will be satisfied as of the date hereof and as of the date the borrowing is made." The Notice also indicates that the entire amount requested is to be paid to the "Borrower" for non-Lucent equipment.

79. On April 2, 2001 Winstar sent Lucent a second fax that contained the back-up detail to the Notice of Request for Borrowing (included as part of DX 668). The cover sheet contains the following note: "Please add this to the draw request as an attachment. Although this is not usually provided, this is the detail behind the services number." The detail attached is a one page chart that is captioned:

Winstar Telecommunications, Inc.
Lucent Billing for Capital Labor
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The chart is virtually identical to the one attached to the fourth quarter 2000 request except that this request is for the months of January, February, and March (for which the figures are estimates) of 2001. The total of all of these costs is approximately \$62,050,742.⁴⁴

80. Lucent refused to pay citing the lack of a task order. The lack of a task order was simply a ruse, however. Lucent had not required task orders in the past and, although Aversano's September 27, 2000 letter purported to set new parameters for payment, Aversano's letter extorted Winstar's assent to the reset terms by threatening nonpayment. Even Lucent's own executives testified that the documentation submitted by Winstar created a "commercially binding relationship" for the relevant time periods: "[a]t September 30th [2000], we clearly were in a relationship that was commercially binding because there were purchase orders and invoices between the companies where we subcontracted with them." (Montemarano, Video-direct at 10-11; see also Montemarano, Video-direct 68:8 — 69:24; Simpson, Video-direct at 18- 54).⁴⁵

81. Although, beginning as early as the communications surrounding the invoice for the second quarter of 1999, Lucent warned Winstar that it would pay for Wireless' services "one last time" without a task order, there were too many "one last times" for that warning to be effective. (See Aversano's letter of September 27, 2000; December 27, 2000 call

⁴⁴This figure was calculated by the Court; the numbers listed on the line called "Grand Total" are unreadable on the exhibit. Some of the numbers throughout the exhibit are difficult to read but the total appears to be within \$1 of the amount requested in the Notice of Request for Borrowing.

⁴⁵The transcript of Montemarano's deposition testimony is Joint Trial Exhibit 9; the transcript of Simpson's testimony is Joint Trial Exhibit 11.

between Lucent and Winstar) (Wilson, Tr. 16-110-11). Moreover, privately Lucent employees agreed that Lucent was obligated to pay for these services. As is discussed in greater detail below, Lucent was using the threat of non-payment to get Winstar to renegotiate their various agreements to get a better deal. On repeated occasions, Lucent advised Winstar that it was paying for Wireless' services under the Subcontract "one more time" or "one last time" but always paying each invoice until March 2001 when Lucent was again trying to turn up the heat to get a better deal from Winstar. (Wilson, Tr. 16-110-11).

82. The requirement that there be "task orders" as contemplated by the Subcontract was modified by the course of conduct between the parties.

83. Lucent argues that this course of conduct between the parties is irrelevant because the Subcontract contains a "no oral modification" clause. Although such clauses are generally enforceable under New York law, there are two exceptions: (1) where an oral modification is supported by full performance, or by partial performance unequivocally referable to the oral modification, *Rose v. Spa Realty Associates*, 42 N.Y.2d 338, 343, 397 N.Y.S.2d 922, 926 (N.Y. 1977), and (2) where a party has relied upon an oral modification through conduct which is incompatible with the express terms of the contract, equitable estoppel will prevent the other party from attempting subsequent strict reliance on the written terms. *Id.*, 42 N.Y. at 344, 397 N.Y.S.2d at 927. 84. "Under New York law, oral directions to perform extra work, or the general course of conduct between the parties, may modify or eliminate contract provisions requiring written authorization or notice of claims." *Barsotti's, Inc. v. Consolidated Edison Co. of New York, Inc.*, 254 A.D.2d 211, 212, 680 N.Y.S.2d 88, 89 (1998) (internal quotations and citations omitted). When the contract has

not been fully performed, "the party seeking relief from the written terms of the contract must introduce evidence of conduct on the part of other parties or reliance on his own part which is "unequivocally referable" to the oral modification and incompatible with the contract's written terms. *Rose*, 42 N.Y.2d at 341, 344, 366 N.E.2d at 1281, 1283, 397 N.Y.S.2d at 924, 927. "Because the doctrine of part performance is based upon the equitable principle that it would be a fraud to allow one party, insisting on the Statute [of Frauds], to escape performance after permitting the other party, acting in reliance, to substantially perform, the acts of part performance must have been those of the party insisting on the contract, not those of the party insisting on the Statute of Frauds." *Messner Vetere Berger McNamee Schmetterer Euro RSCG Inc. v. Aegis Group PLC*, 93 N.Y.2d 229, 237, 711 N.E.2d 953, 958, 689 N.Y.S.2d 674, 679-80 (1999).

85. In this case the parties' behavior resulted in a modification to the Subcontract. There can be no question that Wireless' performance was undertaken pursuant to the Subcontract. Based upon Lucent's past practices, neither Wireless nor Winstar was unreasonable in relying upon Lucent's practice of funding and paying for services upon presentation of an invoice and spreadsheet and neither was unreasonable in expecting this practice to continue. Moreover, it is not credible that almost two years after the pattern had been established that Lucent would insist upon compliance with the letter of the Subcontract, particularly when Lucent has used this tactic in the past to try to pressure Winstar and when Lucent itself was dragging its heels on negotiating the long-awaited transition agreement. In fact, after Lucent forced Uhl, under threat of non-payment of the

Winstar's September 8, 2000 invoice in the amount of \$65,509,331, to sign Aversano's September 27, 2000 letter (PX 88) purportedly resetting the terms and conditions of the Subcontract, Lucent ignored the reset terms the very next quarter. Therefore based on the parties' behavior, the Subcontract was modified to provide for payment of purchase orders, invoices, etc. after the Wireless performed the work and thus Lucent's refusal to pay the March 2001 invoice was in breach of the Subcontract.

86. The Trustee is awarded damages in the amount of \$62,050,742.00, the amount of the March 2001 invoice which Lucent was obligated to, but did not, pay. Pursuant to the law of this case, no consequential or punitive damages are awarded in connection with the breach. (See Docket #85 and #103). Moreover the parties have agreed that, if the event that the Trustee should be awarded damages pursuant to this Count, Lucent would be entitled to an offset of \$6.3 million. Therefore the damage award is reduced to \$55,750,742.00.

COUNT X: PREFERENCE

87. Section 547(b) of the Bankruptcy Code, 11 U.S.C. § 547(b), provides in relevant part as follows:

Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(B) between ninety days and one year before the date of filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

88. The burden of proving each of these elements by a preponderance of the evidence is on the chapter 7 Trustee. 11 U.S.C. § 547(g). *Official Committee of Unsecured Creditors v. Conceria Sabrina*, 195 B.R. 602, 612 (Bankr. M.D.Pa. 1996).

89. In November 2000, with Lucent and Winstar still in negotiations on a transition agreement, Winstar informed Lucent that Siemens agreed to join the Bank Facility and lend Winstar an additional \$200 million.

90. Prior to the closing of the Siemens loan, Winstar sought Lucent's permission to keep all, or failing that, \$100 million of the loan and pay the other \$100 to Lucent even though the Second Credit Agreement called for 100% of the proceeds of any increase in the Bank Facility to be paid to Lucent. Lucent refused and responded with a letter dated November 7, 2000 "consent letter" that was merely a list of demands. Those demands

included the following:

A. First, Lucent demanded that Winstar draw all of the funds down as soon as they were available and pay them to Lucent, rather than allowing Winstar to determine whether and when it would tap the facility.

B. Second, Lucent demanded that Winstar agree to prepare a written paydown schedule for the remainder of the sums it owed Lucent under the Second Credit Agreement — even though Winstar was not obligated even to begin repaying the sums until 2005 — and insisted that Winstar help Lucent sell off the other outstanding Winstar borrowings.

C. Third, Lucent required that Winstar cooperate in Lucent's performing a due diligence review of Winstar.

91. When Winstar did not immediately agree to Lucent's demands, Lucent put the transition agreement negotiations on hold. Lucent's communications to Winstar were clear and carried the single message: agree to Lucent's demands or there would be no transition agreement.

92. When Winstar still did not acquiesce, Lucent played its ultimate trump card: give Lucent all of the Siemens proceeds or there would be no further draws under the Second Credit Agreement. Lucent, of course, could not withhold funding without breaching the Second Credit Facility. Lucent's threat was one more ploy to control Winstar.

93. Faced with the economic pressure, Winstar agreed to turn over the Siemens

proceeds and on December 7, 2000 closed on a \$200 million increase to its syndicated loan with Bank of New York.

94. On the same day Winstar paid, by wire transfer, Lucent \$188,180,000 to reduce Winstar's outstanding loan with Lucent. This transfer represented the net loan proceeds of \$194 million minus \$5,820,000 refund of an up-front fee Winstar had paid Lucent at the time of the borrowing under the Second credit Agreement.

95. Lucent disputes that a transfer of Winstar's interest in property was made, that Winstar was insolvent at the time of the Transfer, and that Lucent was an insider of Winstar at the time of the Transfer.

Transfer of the Debtor's Interest

96. Lucent waived the argument that there was not a transfer of Winstar's interest when it agreed to the following stipulated fact set forth in paragraph 6 of the Additions to Stipulated Facts, filed in open court on March 21, 2005:

Section 547(b)(1) of the United States Bankruptcy Code has been satisfied with respect to the Trustee's claim that the transfer to Lucent of a portion of the Siemens loan proceeds constituted a voidable preference.

97. Subsequently, after the Trustee had rested, Lucent argued its motion for partial findings under Fed. R. Civ. P. 52(c), incorporated by reference into Fed. R. Bankr. P. 7052, and asserted for the first time that the Trustee had not sustained her burden of proving that section 547(b)(1) had been satisfied. (Tr. 17-7). Having stipulated that this element has been satisfied, Lucent is not free to take back the stipulation after the Plaintiff concluded her case. But lest Lucent argue that the stipulated fact which, to the Court, is clear on its face is

somehow ambiguous or means something other than what is says, the Court finds that even without the stipulation, there is more than ample evidence that a transfer of Winstar's interest in property occurred when it paid over a portion of the Siemens proceeds to Lucent. As Judge Fitzgerald recently stated in *In re AmeriServe Food Distribution, Inc.*

Section 547(b) requires, inter alia, that the property transferred by the debtor be an "interest of the debtor in property." The Supreme Court has interpreted this to be "property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." *Begier v. IRS*, 496 U.S. 53, 58, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990). In determining whether a transfer was "an interest of the debtor in property," courts apply the "diminution of estate doctrine," under which a transfer of an interest of the debtor occurs when a transfer "diminish[es] directly or indirectly the fund to which creditors of the same class can legally resort for the payment of their debts, to such an extent that it is impossible for other creditors of the same class to obtain as great a percentage as the favored one." *In re Superior Stamp & Coin Co. Inc.*, 223 F.3d 1004, 1007 (9th Cir.2000), quoting 4 Collier on Bankruptcy, ¶ 547.03, at 547-26 (15th ed.1993).

AFD Funds v. Transmed Foods, Inc. (In re AmeriServe Food Distribution, Inc.), 315 B.R. 24, 29 (Bankr. D. Del. 2005).

98. But for the payment over to Lucent that Debtor would have had the use of those funds. That the failure to pay Lucent upon completion of the refinancing with Siemens might have given rise to a claim by Lucent for breach of contract does not nullify the fact that a transfer of the Debtor's interest was made.

99. Lucent further attempts to couch this argument as one of "substitution," that is, Siemens was substituted for Lucent on that portion of the loan it made. This argument is factually incorrect. By Lucent's own admission, its collateral pool was different from that

given the Siemens. The Siemens transaction was not simply the substitution of one lender for another. Viewed another way what Lucent is really arguing is, as the Trustee correctly notes, the so-called "earmarking doctrine." Under this theory Lucent argues that Winstar had no ability to divert a vast majority of the Siemens proceeds away from Lucent. Thus, Lucent asserts Winstar had no interest in the proceeds and was somehow simply a conduit through which the money flowed. But the facts here are distinguishable from those cases in which debtors validly assign proceeds before they are acquired. Here there was no assignment, just a simple promise to pay. That contractual obligation, without more, is insufficient to convert this into an assignment. Compare *In re Computer Engr'g Assocs., Inc.*, 337 F.3d 38 (1st Cir. 2003) (valid assignment of contract proceeds meant that debtor had no interest in proceeds as they accrued); *In re RISCmanagement, Inc.*, 304 B.R. 566 (Bankr. D. Mass. 2004) (valid assignment of contract proceeds would deprive debtor of any interest in that property, but mere agreement to pay creditor out of contract proceeds would not). Moreover there is nothing in the record evidencing an agreement between Siemens and the Debtors that the proceeds of the Siemens transaction be used to pay Lucent. See *Reigle v. S.S. Mahajan (In re Kumar Bavishi & Associates)*, 906 F.2d 942, 944 (3d Cir. 1990) (affirming preference where "record does not reflect the existence of an agreement between [new creditor] and the debtor that the funds be used to pay a specified antecedent debt"); *In re Bohlen Enters., Ltd.*, 859 F.2d 561, 566 (8th Cir. 1988); *Howdeshell of Fort Myers v. Dunham-Bush, Inc. (In re Howdeshell of Fort Myers, Inc.)*, 55 B.R. 470, 474-75 (Bankr. M.D. Fla. 1985) (rejecting earmarking where debtor decided who to pay, and third

party did not "condition" loan on payment to defendant).

100. Finally, earmarking is an affirmative defense. Lucent did not raise it in its Answer or in the Joint Pretrial Memorandum. Thus, even if Lucent had not previously waived the issue in the Additional Stipulated Facts, and even if it had proved facts that bring the Siemens proceeds under the doctrine of earmarking, it waived the defense when it failed to plead it as an affirmative defense.

Insolvency

101. Under the Bankruptcy Code

"insolvent" means— (A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title

11 U.S.C. § 101 (32).

102. This test of insolvency, the so-called "balance sheet" insolvency, compares the "fair value" of all of the debtor's assets with the face or "stated" value of its liabilities on the relevant date. It is different from equity tests that focus on a debtor's current ability to pay debts as they become due. Moreover, although labeled as the "balance sheet" test, as Judge Walrath noted "this may be a misnomer because the Balance sheet Test is based upon a fair valuation and not based on Generally Accepted Accounting Principles ('GAAP'),

which are used to prepare a typical balance sheet." *Lids Corp. v. Marathon Investment Partners, L.P. (In re Lids Corp.)*, 281 B.R. 535, 540 (Bankr. D. Del. 2002). "[A]lthough GAAP is relevant in [a] section 547 solvency analysis, it is not determinative." *Id.* at 542. "Whether a company is insolvent under the Bankruptcy Code is considered a mixed question of law and fact." *In re Trans World Airlines, Inc.*, 134 F.3d 188, 193 (3d Cir. 1998).

Fair Valuation

103. There are three standard approaches to determine the fair value of assets: the market approach, the income approach and the asset approach. (Scherf, Tr. 12-12-13 and 23-24). Although experts generally consider each of these approaches (Scherf, Tr 12-13), not all of the approaches are appropriate or helpful in determining the proper measure of valuation. Indeed valuation, although employing broad principles of economics, is as much an art as it is a science. Each approach may yield a different result and which approach offers the best or better framework is a determination made in light of the facts of a case. Nevertheless there are some basic tenets that guide courts in evaluation valuation evidence.

104. Fair valuation is generally interpreted as fair market value, that is the amount a hypothetical willing buyer would pay to a willing seller, rather than a distressed or liquidation value. *Travelers Int'l AG v. Trans World Airlines, Inc. (In re Trans World Airlines, Inc.)*, 134 F.3d 188, 194 (3d Cir. 1998), *cert. denied*, 523 U.S. 1138, 118 S.Ct. 1843, 140 L.Ed.2d 1093 (1998).

105. "[A] fair valuation of assets contemplates a conversion of assets into cash during a reasonable period of time." *Id.* Although the determination of what is a reasonable period of time depends upon the facts of each case, a "reasonable time should be an estimate of the time that a typical creditor would find optimal: not so short a period that the value of the goods is substantially impaired via a forced sale, but not so long a time that a typical creditor would receive less satisfaction of its claim, as a result of the time value of money and typical business needs, by waiting for the possibility of a higher price." *Id.* at 195. Thus the Court must decide whether "fair value" under the facts of this case means that the Debtor's assets at the time of the transfer must be valued as a going concern or on some other basis, such as a liquidation sale. The answer depends on whether a liquidation in bankruptcy was "clearly imminent on the date of the challenged transfer...." *Id.* at 193.

Vadnais Lumber Supply, Inc. v. Byrne (In re Vadnais Lumber Supply, Inc.), 100 B.R. 127, 131 (Bankr. D. Mass.1989)("The proper standard of valuation to be applied in determining solvency in a bankruptcy proceeding is the value of the business as a going concern, not the liquidation value of its assets less its liabilities.... Liquidation value is appropriate, however, if at the time in question the business is so close to shutting its doors that a going concern standard is unrealistic...."). Moreover "going concern" value may not be an appropriate test in an unstable market. *In re Art Shirt, Ltd.*, 93 B.R. 333 (E.D. Pa. 1988).

106. As Lucent's insolvency expert noted in his report:

During the 1999-2000 period telecom stocks exhibited a great deal of volatility. According to Merrill Lynch, during the period from January 1, 1999 to early March 2000 an average stock within the emerging broadband group appreciated 63% year to

date, then these stocks declined an average of 87% by the end of 2000.

(DX 701at 11).

107. The traditional method of determining going concern value is by capitalizing net profit." *Vadnais Lumber Supply*, 100 B.R. at 131.

108. The Trustee and Lucent each rely upon the testimony of their respective insolvency experts and not unexpectedly those experts reached vastly different conclusions. The Trustee's expert, Scherf, concluded that Winstar was insolvent on December 7, 2000, the date of the transfer; Collins, Lucent's expert, concluded the Debtor was solvent on that date.

109. Stephen J. Scherf, the Trustee's expert, is a Certified Public Accountant and a Certified Valuation Analyst. He is a principal in Parente Rudolph, LLC and is well qualified to render an expert opinion in the area of insolvency. Lucent does not dispute his qualifications as an expert in this matter. Scherf's report was admitted into evidence as PX 460.

110. Lucent relied upon the expert opinion of Kevin Collins, a managing director of Houlihan Lokey Howard & Zukin and in charge of the valuation practice of the firm's New York City office. He is also well qualified to render an expert opinion in the area of insolvency and the Trustee does not dispute his qualifications as an expert in this matter. His report was admitted into evidence as DX 701.⁴⁸

⁴⁸Both experts have substantial experience testifying as experts. Both have had courts accept their opinions as correct; both have had their opinions criticized. Because the Court must determine solvency in light of the unique facts of *this* case, criticism by

111. In this case the Trustee's expert considered all three approaches (Scherf, Tr. 12-24-25), while Lucent's expert did not consider the asset approach (Collins, Tr. 18-16).

The Market Approach

112. The market approach measures the subject company's assets and those of similarly situate companies.

113. Collins testified that "there was a large and active trading market for Winstar...." (Collins, Tr. 18-16). He opined that the market approach or an income approach would be the appropriate tests for valuation. Because the market approach considered the value only on the basis that the purchaser could only acquire a minority ownership interest via stock purchases, he then adjusted the value upward to include the increase in value that could be attributed to buying a controlling, or indeed entire, interest in the Debtors. Based upon his analysis, he opined that Winstar was solvent on the Transfer date.

114. Scherf rejected the stock market valuation of Winstar and he was correct to do so. The stock market value artificially overvalued the Debtor. For one thing market investors did not know that Lucent was holding back on issuing its refinancing notice. Lucent, but not the average investor, knew that Winstar's true financial picture was much bleaker than the Debtors' publicized financials would indicate. Moreover, as even Collins acknowledged, the market was unstable. [cite] It was simply too unstable to be an adequate indicator of valuation.

another court of the methodology chosen by either expert in a different factual context has limited value.

115. Moreover, as part of his market approach, Collins, blending a market approach with principles upon which the income approach is based, examined sales of companies or controlling interest in companies that were not comparable to Winstar in performing a guideline company approach and comparable transaction methodology.

The Asset Approach

116. Scherf and Collins both utilized an asset approach to value Winstar. This approach looks at categories of assets and determines the fair market value of those assets or categories of assets based on what it would cost to replace or reconstruct the assets, that is, their replacement cost. (Scherf, Tr. 12-24 and PX 460 at 6). This approach generally begins with a company's balance sheet but substitutes the fair market value of assets and liabilities in place of the book value.

117. The date of the transfer, in this case December 7, 2000, is the relevant date for solvency. The Debtors, however, did not have financial statements as of that date, and, even if they had, financial statements prepared according to GAAP, although relevant, are not controlling. The Debtor did, however, have internally prepared financial statements for December 1, 2000 and December 31, 2000. Thus one approach to determining solvency as of December 7, 2000 is to begin with the financial statements of December 31, 2000 and apply a technique commonly referred to as retrojection. "[T]he United States Court of Appeals for the First Circuit has expressly approved the technique of retrojection, whereby a trustee may meet his burden of proof on the issue of insolvency by showing that the debtor was insolvent at a reasonable time subsequent to the alleged transfer, accompanied by proof that the debtor's financial situation did not change materially during the intervening

period." *In re Industrial Commercial Elec., Inc. V. Babineau* (*In re Industrial Commercial Elec., Inc.*), 2004 WL 1354530, *7 (Bankr. D. Mass.) (citations omitted). There is no reason to believe that this technique, employed by both parties' experts, would not be expressly approved by the Third Circuit as well. "That rule [retrojection] provides that when a debtor was insolvent on the first known date and insolvent on the last relevant date, and the trustee demonstrates 'the absence of any substantial or radical changes in the assets or liabilities of the bankrupt between the retrojection dates,' *id.*, the debtor is deemed to have been insolvent at all intermediate times. *Foley v. Briden* (*In re Arrowhead Gardens, Inc.*), 32 B.R. 296, 300 (Bankr. D. Mass.1983)." *Murphy v. Nunes* (*In re Terrific Seafoods, Inc.*), 197 B.R. 724, 731 (Bankr. D. Mass. 1996).

118. There were no contemporaneously prepared audited financials for the year ended December 31, 2000. Winstar's unaudited financials for that time showed Winstar had a positive net worth *on a book value basis*. (PX 460 at 10). Book value is not the same as fair value.⁴⁷ If Winstar's net worth is evaluated on an income basis, it had a negative value.

⁴⁷In fact one indication of how poorly Winstar's book value reflected that actual market value of its assets is the optronics inventory. Because Winstar had purchased unneeded equipment from Lucent, including optronics equipment, when Winstar's financial condition was deteriorating in the fall of 2000, it made plans to institute some measures to improve its financial condition. See PX 68. One of those measures included selling off excess equipment, including the optronics equipment. (Kantor Video-direct at 479). But the only offer Winstar received for its excess optronics equipment came from Lucent, and it was at a reduced price. See PX 22 (Uhl's 12/14/00 email to Frank Jules, Fred Rubin and Nate Kantor: "Guys[,] Carole Spurrier and Debbie Harris called at 4:30 to inform as follows:...5. They have found no buyer for the Optronics. Their internal remarketing group offered to buy it at \$.30 on the \$1.00. (I said no thanks).").

119. Scherf identified four subsequent events he believed had to be accounted for in order to apply the asset approach: (1) the recognition and recording of a \$1.8 billion impairment charge for the three months ended December 31, 2000 by Grant Thornton, LLP, the Debtors' independent auditors; (2) the sale of substantially all of the Debtors' assets and not of their liabilities to IDT for \$42.5 million on December 19, 2001;⁴⁸ (3) the valuation prepared for IDT in connection with the allocation of the purchase price; and (4) the administrative insolvency of the Debtors' estates, a factor which he ultimately determined did not provide evidence of solvency or insolvency on the Transfer Date. (Scherf, Tr. 12-25).

120. The impairment charge was based on projections that were prepared for a presentation on December 11, 2000. The impairment charge was clearly knowable on December 7, 2000. (Scherf, Tr. 12-33).

121. In February 2001 Monaco sent an email documenting Winstar's cash flow problems. Monaco's email in Feb 2001 re: "Depending on the time of checks clearing, we will have difficulty getting to the end of March when we anticipate a brief reprieve by receiving \$60mm from Lucent for services, etc." (PX 284). By March 30, 2001 Uhl recognized Winstar's need to file bankruptcy. (Uhl Video-direct at 242-43).

122. Valuations were prepared for IDT in connection with the December 19, 2001 sale by Deloitte & Touche, which valued just the tangible assets at \$328 million, and Empire Valuation, after reviewing the work of Deloitte & Touche, determined that the tangible and

⁴⁸The purchase price was paid as follows: \$30 million in cash and \$12.5 million in IDT Class B stock. (Scherf 12-34; PX 460 at 10).

intangible assets were worth \$630 million.

123. Based upon his analysis, Scherf opined that Winstar was insolvent by approximately \$1.6 billion on the Transfer Date. The Court agrees.

124. Lucent criticizes any reliance upon the actual sale price ultimately paid for Winstar's assets during its bankruptcy. It argues this number represents a distress sale and a price significantly less than Winstar's value on December 7, 2000. The sale price, although not the only or even the primary fact upon which Scherf's valuation is based, is relevant. Contrary to Lucent's characterization of the sale of Winstar's assets, the sale was not an auction but rather as a going concern. See, e.g., Order Authorizing Sale [of substantially all assets to IDT], dated December 19, 2001 at M (entry of sale order necessary to provide uninterrupted service to Debtors' customers) [Docket # 1627]; Master/Final Execution Copy of Asset Purchase Agreement [Docket # 1629].

The Income Approach

125. The income approach estimates the value of a company based on its earnings capacity. (PX 460 at 7). There are two commonly used methods to conduct income approach valuation. The first, capitalized debt free method also called capitalization of earnings, is based on a company's debt free net cash flow for one year or some other discreet period. Winstar never had any debt free cash flow. In fact Winstar, which began its operations in 1996, lost \$83 million in that year. The losses steadily increased and by 2000 the loss had grown to \$870 million. Thus application of this method mandates a finding of insolvency.

126. Under the second method, the discounted cash flow method, future earnings

are projected and then discounted to present value, adjusted to reflect the risk that such earnings will not materialize. (PX 460 at 8). Winstar in fact had prepared projections for a ten (10) year period, until 2009. Because of Winstar's historical performance and the instability of the telecommunications industry, Scherf concluded the Winstar was insolvent using this method. His conclusion is correct. Those projections were speculative at best. They included growth rates significantly in excess of what was projected to be reasonable growth in the telecommunications industry. Moreover, while Winstar generally had been able to meet its revenue projections-although the ten year projections through 2009 relied heavily upon equity infusion which may or may not materialize in an unstable market, historically it understated its expenses. Finally the balance sheet for December 31, 2000 in actuality differed significantly for what Winstar had projected.

127. Collins ignored the deficiencies inherent in Winstar's projections; instead he accepted them at face value and thus his reliance on them produced a flawed result. Further he used a discounted rate of 16% to reflect the risk to investors at a time when Winstar's debt yield was in the range of 25-30%.

128. But Lucent argues that Scherf ignored contemporaneous cash flow data and future projections (which would be used to perform a valuation based on the discounted cash flow method) when performing a valuation based on the income approach and instead relied upon the capitalized debt free net cash flow method. Lucent is incorrect. The capitalized debt free net cash flow method is supported by valuation treatises and has been adopted by courts. Moreover, Scherf did not ignore the discounted cash flow method but rather rejected its use in this case given the unreliability of Winstar's future projections. The

discounted cash flow methodology is simply an unacceptable method to be used in this case.

Amount of Liabilities

129. Absent some unusual circumstances not applicable here, the insolvency test anticipates that liabilities will be valued at their face value. *In re Trans World Airlines, Inc.*, 134 F.3d 188, 197 (3d Cir. 1998).

130. Scherf values those liabilities at \$4.8 billion as of December 7, 2000 (Tr. 12-14-15, PX 460); Collins did not value them as of that date. (Tr.18-118). In fact Collins testified that he was unable to value the liabilities as of December 7, 2000. (Tr. 18-119). He valued the liabilities as of December 31, 2000 at \$4.321 billion. (Tr. 18-118).

131. Based upon the valuation of the assets and liabilities, Winstar was insolvent on December 7, 2000, the date of the Transfer.

Insider Status

132. Because the Transfer occurred during the period greater than 90 days before the Petition date but less than one year prior to the bankruptcies, the Trustee may only recover on her preference claim if she proves that Lucent was an insider at the time of the Transfer.

133. With respect to a corporation, an insider includes a "person in control of the debtor." 11 U.S.C. § 101 (31).

134. Some courts have defined control as the creditor dominating the debtor. *In re A. Tarricone, Inc.*, 286 B.R. 256, 265 (Bankr. S.D.N.Y. 2002). Others 'have used terminology such as having a 'stranglehold' over the debtor, having 'complete

domination' of the debtor, rendering the debtor a 'mere instrumentality or alter ego' of the lender or 'powerless to act independently.'" *Badger Freightways, Inc. v. Continental Ill. Nat'l Bank & Trust Co. Of Chicago (In re Badger Freightways, Inc.)*, 106 B.R. 971, 981-82 (Bankr. N.D. Ill. 1989)(internal citations omitted).

135. Both Lucent and the Trustee correctly note that whether a party is or was "in control" of a debtor requires a case by case determination. "The legislative history of § 101(31) indicates that the term applies to 'one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor.'" *Official Committee of Unsecured Creditors v. Austin financial services, Inc. (In re KDI Holdings, Inc.)*, 277 B.R. 493, 511 (Bankr. S.D.N.Y. 1999) (quoting S.Rep. No. 989, 95th Cong., 1st Sess. 25 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5810, 6269) (legislative history 11 U.S.C. § 101(31)) (other citations omitted). "The true test of 'insider' status is whether one's dealings with the debtor cannot accurately be characterized as arm's-length. *In re Craig Systems Corporation*, 244 B.R. 529, 539 (Bankr. D. Mass.2000). The emphasis is on the nature of the relationship between debtor and the other person, especially on whether their relationship gave the other person the power or influence to have a debt owed to it repaid." *In re Demko*, 264 B.R. at 408.

136. In determining whether a creditor, and particularly a bank, has the requisite level of control to be an insider, the courts examine whether the creditor had more ability to assert control than the other creditors, whether the creditor made management decisions for the debtor, directed work performance, and directed payment of the debtor's expenses. *ABC Elec. Serv. Inc. v. Rondout Elec., Inc., (In re ABC Elec. Serv. Inc.)*, 190 B.R. 672 (Bankr.M.D.Fla.1995). *There must be day-to-day control, rather than some monitoring or exertion of influence regarding financial transactions in which the creditor has a*

direct stake.

In re Armstrong, 231 B.R. 746, 749-50 (Bankr. E.D.Ark. 1999).

137. That does not mean, however, as Lucent asserts that Lucent must have used its control to obtain the transfer although whether the transfer in question was done under pressure from Lucent is one fact to be considered in making the determination of control. *Walsh v. Dutil (In re Demko)*, 264 B.R. 404, 408 (Bankr. W.D.Pa. 2001). Neither the Bankruptcy Code nor the case law, however, require the use of the insider's status as an insider to force the preferential payment to be made. The elements of a preference are set forth in Section 547(b) which requires, among other things, that the transfer have been made "between ninety days and one year before the date of filing of the petition, if such creditor at the time of such transfer was an insider...." 11 U.S.C. § 547(b)(4)(B). There is nothing in the language that requires the causal connection between the control and the preferential transfer that Lucent claims is needed.

138. In this case the facts indicate that Lucent controlled many of Winstar's decisions relating to the buildout of the network. Lucent forced the "purchase" of its goods well before the equipment was needed and in many instances under the Software Pool Agreement, never needed at all. Lucent treated Winstar as a captive buyer for Lucent's goods. These purchases, especially those under the Software Pool Agreement were just a means for Lucent to inflate its own revenue.

139. Lucent argues, however, that Winstar is complicit in its scheme to inflate revenues. For example when Lucent required Winstar employees to sign false bill and hold letters needed for Lucent to book revenue, they did so even though Winstar knew that

Lucent used the process to deceive its auditors. That Winstar was a participant in Lucent's scheme does not prove that Winstar was not under Lucent control. In fact, Lucent's ability to involve Winstar's employees in Lucent duplicity is further evidence of Lucent's control.

140. Two former Lucent employees, Deborah Harris and William Plunkett refused to answer deposition questions beyond providing their names and addresses and instead asserted their right against self incrimination.⁴⁹ "The Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976). This Court may and chooses to draw negative adverse inferences from their testimony. Both were employees of Lucent when the relevant actions occurred.⁵⁰ Although neither is a party to this lawsuit, a fact which Lucent emphasizes to

⁴⁹Prior to trial the Trustee sought a ruling that the Court could draw an adverse interest from Harris' and Plunkett's silence while Lucent disputed that their testimony was relevant and otherwise corroborated. It also argued that the questions posed to these two individuals were too specific thus rendering the examinations unfair. The Court granted the Trustee's motion but noted that it would revisit the issue after hearing the evidence upon Lucent's request. See Transcript of March 16, 2005 hearing [docket # 322] at 59-62. Having revisited the issue, the Court concludes that its initial ruling was correct for the reasons set forth herein.

⁵⁰There is no dispute that Harris and Plunkett were employed by Lucent during the time when the events at issue in the specific questions which the Court finds that they would have answered adversely had they answered the questions honestly. Ms. Harris answered questions during her 2001 deposition and at the time testified she was employed by Lucent as the Vice President of Sales for the Winstar account beginning in August 2000. (Harris, Depo, Tr. 11-34). She also testified that William Plunkett the Vice President of Emerging Markets and was a member of Lucent's management team responsible for the Winstar account. (*Id.*). Mr. Plunkett was placed on administrative leave by Lucent in late November 2000 and was terminated shortly thereafter. (Wilson, Tr. 16-11). His termination was a direct result of his involvement in postdating documents relating to the Software Pool Agreement. (Schacht, Tr. 21 at 35). Both Harris and Plunkett

show that neither "cared whether Lucent succeeds in this litigation," their non-party status does not render admitting their testimony impermissible given the facts of this case. Nor does the fact that neither was employed by Lucent when their testimony was taken. *Rad*. Both Harris and Plunkett were parties to the SEC's action (PX 739); both were employed by Lucent during the relevant time frame and the questions they refused to answer related directly to their actions as Lucent employees during this period.

141. Before an adverse inference may be drawn from a party's refusal to testify in a civil case, there must be independent corroborative evidence to support the negative inference beyond the invocation of the privilege. See *Baxter*, 425 U.S. at 318, 96 S.Ct. at 1558. ("the Fifth Amendment does not forbid adverse inferences against parties ... when they refuse to testify in response to probative evidence offered against them"); "[L]iability should not be imposed based solely upon the adverse inference." *United States v. Private Sanitation Industry Ass'n*, 899 F. Supp. 974, 982 (E.D.N.Y.1994), *aff'd* 47 F.3d 1158 (2d Cir.), *cert. denied sub. nom.*, *Ferrante v. United States*, 516 U.S. 806, 116 S.Ct. 50, 133 L.Ed.2d 15 (1995).

142. During his deposition Mr. Plunkett was asked a series of questions relating to end of quarter deals, sham bill and hold transactions, the Software Poll Agreement. He asserted his Fifth Amendment privilege in response to each question but had he responded truthfully, his testimony would have added to the substantial evidence against Lucent and indeed would have been devastating to his former employer. Examples of the questions

reported to Nina Aversano.

asked of this witness are set forth below.

Q: Isn't it a fact that in 1999 and 2000 you participated in transactions between Lucent and Winstar at the end of each quarter from December 31st, 1999 through September 30th, wherein Winstar purchased substantial quantities of equipment, software, and/or services from Lucent Technologies?

A: "On advice of counsel I respectfully decline to answer on the ground that my answer may incriminate or tend to incriminate me." (Hereinafter referred to as "Fifth Amendment Response").

Q: Isn't it a fact that in December 1999 Winstar purchased over \$96 million worth of goods and services from Lucent?

A: Fifth Amendment Response

Q: Isn't it a fact that this transaction was referred to as an end of quarter deal?

A: Fifth Amendment Response

Q: Isn't it a fact that certain of the equipment purchased by Winstar in the December 1999 end of quarter deal was not delivered to Winstar but was held by Lucent even through the purchase price was paid by Winstar?

A: Fifth Amendment Response

And isn't it a fact that in connection with the end of quarter deal and in order to be certain that Lucent could book the revenue

Lucent prepared letters which it gave to winstar which it asked
Winstar to sign?

A: Fifth Amendment Response

Q: Isn't it a fact that Winstar did, in fact, sign the letters provided
by Lucent with respect tot he December 1999 end of quarter
deal?

A: Fifth Amendment Response

Q: And isn't it, in fact, correct that these letters were not true and
correct in all respects?

A: Fifth Amendment Response

Q: Isn't it a fact that these letters falsely stated dates by which
Lucent would install the purchased equipment?

A: Fifth Amendment Response

Q: And isn't it a fact the Winstar did not need the equipment
purchased through these letters immediately but was buying the
equipment earlier to provide Lucent with additional revenue?

A: Fifth Amendment Response

Q: And isn't it a fact that the letters also stated falsely that
Winstar lacked the warehouse space to store equipment?

A: Fifth Amendment Response

Q: Isn't it a fact that some of the equipment purchased by
Winstar in the December 1999 end of quarter deal included

Optronics equipment?

A: Fifth Amendment Response

Q: And isn't it a fact that when your employment with Lucent terminated in November of 2000 this equipment remained in Lucent's warehouses?

A: Fifth Amendment Response

(Plunkett, Deposition transcript at p.11, line 25 to p.14, line 23).

143. He was then asked virtually identical questions with respect to March 2000, June 2000 purchases, and September 2000 end of quarter purchases and again asserted his Fifth Amendment privilege. (*Id.* at p.15, line 9 to p. 20, line 25, p. 22, line 8 to p.24, line 4). Similarly when questioned about the Software Pool Agreement, Plunkett refused to answer. Had he answered truthfully his testimony would support the finding that the agreement was a sham transaction; it was nothing more than a device to inflate Lucent's revenues. (*Id.* at p. 24, line 5 to p. 26, line 18).⁵¹

144. Independent evidence shows that Plunkett was involved in the June 2000 end of quarter deal. *See, e.g.*, PX 360 (Ackerman's June 23, 2000 email to Kantor) ("He [Plunkett] wants us to agree to another \$53M in purchases for 2Q (that includes \$17M of accelerated pay as you grow \$\$ for 5ESS's"). Independent evidence also proves he was involved in the September 2000 end of quarter deal and the Software Pool Agreement.

⁵¹Although there is conflicting testimony about the actual value of the goods Winstar was committed to purchases under the Software Pool Agreement, evidence of the value is that it totaled somewhere between \$20 and \$40 million, significantly less than the \$135 million Winstar was to pay.

See e.g., PX 125 (Plunkett's September 29, 2000 letter to Ackerman: "Winstar Agrees [sic] to purchase from Lucent the following ... \$18,852,500 5ESS PAYG") and PX 127 (Ackerman's September 18, 2000 email to Kantor: "I just spoke with Bill [Plunkett]. He informed me that you and Nina had met (dinner?) And you agreed to help them get to the number they need this quarter...something around \$110M, of which we have already spent about \$45M. There is not much I can give them that we really need, but there are some creative things I can do that can get us close to their number without being totally stupid.").

145. Harris was asked virtually the same questions and also invoked her Fifth Amendment privilege. She, like Plunkett, was involved in the transactions about which she was questioned and the Court finds that had she answered truthfully, her testimony would also have been adverse to Lucent. Had Plunkett and Harris answered truthfully about the nature of the relationship between the two companies, they would have acknowledged Lucent's control over Winstar and lack of arms' length relationship between them. *Rad Services v. Aetna Cas. & Surety Co.*, 808 F.2d 271, 280-81 (3d Cir. 1986), quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). See also *Baxter*, 425 U.S. 308; *Libutti v. U.S.*, 107 F.3d 110 (2d Cir. 1997); *Federal Deposit Ins. Corp. v. Fidelity & Deposit Co. of Maryland*, 45 F.3d 969 (5th Cir. 1995); *Davis v. The Mut. Life Ins. Co. of New York*, 6 F.3d 367 (6th Cir. 1993), cert. denied, 510 U.S. 1193 (1994); *Brink's Inc. v. The City of New York*, 717 F.2d 700 (2d Cir. 1983).

146. Lucent was an insider of Winstar's on December 7, 2000, the date of the Transfer.

147. Consequently all of the elements of a preference have been satisfied. The payment of the Siemens proceeds was a preference.

148. Lucent argues, however, that even if the Transfer was preferential the Trustee may not recover because Lucent gave subsequent new value to Winstar when it continued to loan under the Second Credit Agreement. Although the amount that it claims it gave in new value is an ever-changing figure in this case, the inability of Lucent to fix the amount is irrelevant as it is not entitled to the benefit of the new value defense.

149. Lucent bears the burden of establishing new value. 11 U.S.C. § 547(g) (the creditor ... against whom recovery or avoidance is sought has the burden of proving the non-avoidability of a transfer under subsection (c) of this section); *Phoenix Restaurant Group, Inc. v. Ajilon Professional Staffing LLC (In re Phoenix Restaurant Group, Inc.)*, 317 B.R. 491, 494 (Bankr. M.D. Tenn. 2004).

150. Lucent's new value defense fails for two reasons. First, to the extent Lucent provided any equipment or software to Winstar after December 7, 2000, it did so on a secured basis, as is evidenced by the Security Agreements dated May 9, 2000, and December 22, 2000, (DX-32; DX-33) and as admitted by Lucent in its October 11, 2001, secured proof of claim (PX-340) and the escrow fund stipulations. (PX-506; PX-507; PX-508). Second, even if the additional value were provided on an unsecured basis, Lucent has failed to show that it was provided after the receipt by Lucent of the preferential transfer.

151. It is well settled that to support a new value affirmative defense, section 547(c)(4)(A) requires a creditor to establish that, after receiving a preferential payment, the creditor advanced "new value" to the debtor "not secured by an otherwise unavoidable

security interest." *New York City Shoes, Inc. v. Bentley Int'l, Inc. (In re New York City Shoes, Inc.)*, 880 F.2d 679, 680 (3d Cir. 1989). Lucent provided only secured value: all Lucent equipment and software sold to Winstar was sold subject to two separate security agreements dated May 9, 2000, and December 22, 2000. (DX-32, DX-33); Lucent's proof of claim (PX-340) alleges a secured claim although it provides no evidence of the value of its collateral; the Trustee and Lucent have entered into three stipulations (PX-506, PX-507, and PX-508) which recognize the validity of Lucent's security interests and provide for distribution to Lucent of the proceeds of the sale of Winstar assets that were subject to Lucent's lien (subject to judgment on the Trustee's equitable subordination claim).

152. For the foregoing reasons the Trustee is awarded judgment in the amount of \$188,180,000.

COUNT XI: EQUITABLE SUBORDINATION

153. The Bankruptcy Code invests the Court with authority to subordinate all or part of a claim "under the principles of equitable subordination...." 11 U.S.C. § 510(c). Courts considering equitable subordination follow the *Mobile Steel* test: (1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the creditors of the debtor or conferred an unfair advantage on the claimant; and (3) equitable subordination of the claim must not be inconsistent with the Bankruptcy Code. *In re Mobile Steel Co.*, 563 F.2d 692, 700 (5th Cir. 1977). See also *Merrimac Paper Co. v. Harrison (In re Merrimac Paper Co.)*, 420 F.3d 53, 58 (1st Cir. 2005); *Citicorp Venture Capital, Ltd. v. Committee of Creditors Holding Unsecured Claims*, 160 F.3d 982, 986

(3d Cir. 1998).

154. When the creditor is an insider, the proof required to prove equitable subordination is not demanding. In such cases, a bankruptcy trustee need only show "material evidence" of unfair conduct. *In re N&D Properties, Inc.*, 799 F.2d 726, 731 (11th Cir. 1986); see also *In re Epic Capital Corp., et. al.*, 290 B.R. 514, 524 (Bankr. D. Del. 2003), *aff'd*, 307 B.R. 767 (D. Del. 2004).

155. "For non-insider claimants, egregious conduct must be established to justify equitable subordination...." *In re Mid-American Waste Systems, Inc.*, 284 B.R. 53, 70 (Bankr. D.Del. 2002) (Internal citations omitted). "[The degree of non-insider misconduct] has been variously described as 'very substantial' misconduct involving 'moral turpitude or some breach of duty or some misrepresentation whereby other creditors were deceived to their damage' or as gross misconduct amounting to fraud, overreaching or spoliation." *In re M. Paoiella & Sons, Inc.*, 161 B.R. 107, 119 (Bankr. E.D. Pa. 1993), citing *In re Osborne*, 42 B.R. 988, 996 (W.D. Wis.1984).

156. Nevertheless the test is the same; only the standard of proof required differs. *Mid-American Waste Systems*, 284 B.R. at 70 (Internal citations omitted).

Inequitable Conduct

157. There are three generally recognized categories of misconduct which may constitute inequitable conduct for insiders: (1) fraud, illegality, and breach of fiduciary duties; (2) undercapitalization; or (3) claimant's use of the debtor as a mere instrumentality or alter ego." *Id.*

158. The same facts underlying the finding that Lucent was an insider of Winstar warrant a finding that Lucent engaged in inequitable conduct by using Winstar as a mere instrumentality to inflate Lucent's own revenues.

159. Yet whether Lucent is an insider or not does not affect the outcome of the Court's conclusion that the first prong of the *Mobile Steel* test is satisfied: the facts in this case warrant equitably subordinating Lucent's claim because it was egregious. Lucent repeatedly threatened Winstar with nonpayment after Wireless performed significant services under the subcontract, all in an effort to extract more and more from Winstar, Lucent's captive purchaser. Ultimately, when Lucent's new management regime determined that a refinancing notice, the equivalent of a financial death knell for Winstar, had to be sent, Lucent deliberately held up the refinancing notice to ensure that the Siemens refinancing occurred and new equity was infused into the dying Winstar.

Harm to Winstar's creditors

160. Lucent's conduct resulted in substantial damages to Winstar and ultimately Winstar's creditors, including, apart from the preferential payment itself, the interest paid by Winstar to Lucent on unnecessary Lucent equipment and services purchased by Winstar to generate revenue for Lucent, storage costs, and insurance costs. Winstar sustained additional damages in that the approximate \$244 million (on a cost adjusted basis) of Lucent equipment in inventory in warehouses on March 31, 2001 was sold in December 2001 for approximately a penny on the dollar compared to its December 7, 2000, balance sheet stated value.

161. In addition Winstar received \$270 million in equity financing on December 7,

2000 through the issuance of Series H Preferred Stock. The funding came primarily from Welch Carson Anderson & Stowe and Credit Suisse First Boston Private Equity. (DX 701 at 26 and 48).

162. The Debtors and their creditors were harmed by Lucent's deliberate delay in sending the refinancing notice. Lucent intentionally waited until it had received the proceeds of the Siemens refinancing before allowing the public to learn what it already knew: Winstar was in significant financial distress and indeed, as set forth above, was insolvent. Lucent reaped a substantial benefit but at the expense of the Debtors' other creditors.

Consistent with the Bankruptcy Code

163. Subordinating Lucent's claims is not inconsistent with the Bankruptcy Code.

164. Consequently Lucent's claim will be subordinated under section 510(c) of the Bankruptcy Code to the claims of *all* creditors, including all unsecured claims which includes the deficiency claim of Siemens, if any, and to the interests of those entities who infused the \$270 million of equity in Winstar on December 7, 2000. The lien of Lucent is preserved for the benefit of the estate and is transferred to the Trustee in her representative capacity.

LUCENT'S COUNTERCLAIMS

165. Lucent seeks damages from Winstar's estate on the basis of fraud and negligent misrepresentation arising from Winstar's representation implicit in at least four borrowing representations from and after January 18, 2001 that it was in compliance with

the CAPEX covenant.

166. "Under Delaware law, express choice of law provisions in contracts are generally given effect." *Harper v. Delaware Valley Broadcasters, Inc.*, 743 F. Supp. 1076 (D.Del. 1990).

167. Lucent must establish each of the following elements: (1) a material misrepresentation or omission of fact; (2) made with knowledge of its falsity; (3) with an intent to defraud; (4) reasonable reliance on the representation; and (5) resulting damages. *Schlafli Nance & Co. v. Estate of Warhol*, 119 F.3d 91, 98 (2d Cir. 1997); *see also Dallas Aero., Inc. v. CIS Air Corp.*, 352 F.3d 775, 784-85 (2d Cir. 2003). Each must be proved by clear and convincing evidence. *Dallas Aero., Inc. v. CIS Air Corp.*, 352 F.3d 775, 784-85 (2d Cir. 2003).

168. Lucent has not proved that Winstar breached the CAPEX covenant and if it did so, it did so knowingly. Winstar's employees testified that they believed that the company was in compliance with the CAPEX covenant in the first quarter of 2001. To the extent that Winstar was not in compliance with the CAPEX covenant, this "breach" is harmless. Lucent was well aware of Winstar's financial status and some of its employees were even involved in attempting to help Winstar lower its CAPEX in order to comply with the covenant.

169. Lucent has not demonstrated, and given the level of its knowledge and involvement cannot demonstrate, that it reasonably relied upon Winstar's representations. Lucent itself knew of Winstar's deteriorating financial condition in November and December

2000. Lucent was prepared to issue the refinancing notice as soon as it got the Siemens proceeds. For it now to argue it was duped by the Debtor is disingenuous.

170. To establish a claim of negligent misrepresentation, the claimant must prove by a preponderance of the evidence: (1) carelessness in imparting words; (2) upon which others were expected to rely; (3) and upon which others acted or failed to act; (4) to their damage; and (5) the declarant must express the words directly to one to whom it is bound by some relation or owes a special duty of care (which must involve a "closer degree of trust" than that of an ordinary buyer and seller). *Dallas Aero, Inc.*, 352 F.2d at 788; *see also Hydro Investors, Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 20 (2d Cir. 2000). It must also demonstrate that its reliance on Winstar's purportedly false statements was "reasonable." *Morrissey v. GMC*, 21 Fed. Appx. 70, 73 (2d Cir. 2001). 171. As set above, Lucent has not met its burden. It cannot ignore its own knowledge and feign surprise to learn the CAPEX covenant was breached when it was deeply immersed in the financial transactions of Winstar. Therefore judgment will enter for Winstar with respect to Lucent's counterclaims.

CONCLUSION

For the foregoing reasons, the Court finds that judgment should enter for the Plaintiff on all counts and counterclaims as set forth above.

A separate order of judgment for the Plaintiff will enter.

Dated: December 21, 2005

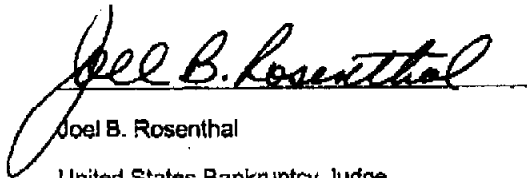

Joel B. Rosenthal
United States Bankruptcy Judge

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

WINSTAR COMMUNICATIONS, INC.,
ET AL.,

Debtors.

CHRISTINE C. SCHUBERT, CHAPTER 7
TRUSTEE,

Plaintiff,

v.

LUCENT TECHNOLOGIES, INC.,

Defendant.

Chapter 7

Case No. 01-1430 (JBR)

Adversary Proceeding
No. 01-1063 (JBR)

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Pursuant to Federal Rule of Bankruptcy Procedure 8006, Appellant Lucent Technologies, Inc. ("Lucent") hereby provides a statement of its issues on appeal with respect to Lucent's appeal to the United States District Court for the District of Delaware from the final judgment entered in this action on December 28, 2005 (Docket No. 373).¹

1. With respect to Count X, did the bankruptcy court err by concluding that Winstar Communications, Inc. ("Winstar") transferred an interest of the debtor in property and that the "earmarking doctrine" was inapplicable?
2. With respect to Count X, did the bankruptcy court err by concluding that Lucent was an "insider" of Winstar as of December 7, 2000?
3. Did the bankruptcy court err by drawing the negative inferences it drew from certain persons' respective refusals to answer questions on the ground, as permitted by the Fifth Amendment to the United State Constitution, that the answer may tend to incriminate him or her?

¹ Terms not otherwise defined herein shall have the meaning as set forth in the bankruptcy court's Memorandum of Decision Including Findings of Fact and Conclusions of Law With Respect To Counts VII, X, and XI of the Second Amended Complaint and Counts 5 and 6 of the Second Amended Answer and Counterclaims (Docket No. 369)

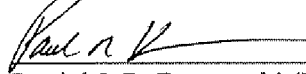
4. With respect to Count X, did the bankruptcy court err by concluding that Winstar was insolvent as of December 7, 2000?
5. With respect to Count X, did the bankruptcy court err by concluding that Lucent was not entitled to the “new value” affirmative defense pursuant to 11 U.S.C. § 547(c)(4)?
6. With respect to Count VII, did the bankruptcy court err by concluding that Lucent breached a contract with Winstar Wireless, Inc. (“Wireless”)?
7. With respect to Count VII, did the bankruptcy court err by concluding that Wireless suffered damages from a breach of contract by Lucent?
8. With respect to Count XI, did the bankruptcy court err by subordinating pursuant to 11 U.S.C. § 510(c) Lucent’s claims to (i) the claims of all other creditors and (ii) certain interests of those entities that infused \$270 million of equity in Winstar on December 7, 2000?
9. Did the bankruptcy court err by denying Lucent’s negligent misrepresentation counterclaim?
10. Did the bankruptcy court err by denying Lucent’s fraud counterclaim?
11. Did the bankruptcy court err in concluding that all matters before the court were “core” matters pursuant to 28 U.S.C. § 157 and, to the extent not core matters, Lucent had consented to entry of final orders by the bankruptcy court?
12. Did the bankruptcy court err in refusing to permit Lucent to offer evidence of Winstar’s breaches of express covenants in the Second Credit Agreement dealing with foreign collateral, EBITDA, and transaction fees?
13. Was it error to permit the Trustee to withdraw her jury demand without Lucent’s consent?
14. Was it error to refuse to withdraw the reference with respect to this adversary proceeding?
15. Was it error to deny Lucent a right to a jury trial on any and all counts and counterclaims?

[Remainder of page intentionally left blank]

Dated: January 19, 2006
Wilmington, Delaware

Respectfully submitted,

RICHARDS, LAYTON & FINGER, P.A.



Daniel J. DeFranceschi (DE Bar No. 3272)
Paul N. Heath (DE Bar No. 3704)
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7700

-and-

WILMER CUTLER PICKERING HALE AND
DORR LLP
Craig Goldblatt
Danielle Spinelli
2445 M Street, NW
Washington, DC 20037
(202) 663-6000

Philip D. Anker
James H. Millar
399 Park Avenue
New York, NY 10022
(212) 230-8800

CRAVATH, SWAINE & MOORE LLP
Paul C. Saunders
Daniel Slifkin
Michael A. Paskin
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

Counsel for Appellant Lucent Technologies, Inc

EXHIBIT D

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 7
WINSTAR COMMUNICATIONS, INC., et al.,	Case No. 01-01430 (Jointly Administered)
Debtors.	
CHRISTINE C. SHUBERT, CHAPTER 7 TRUSTEE OF WINSTAR COMMUNICATIONS, INC. AND WINSTAR WIRELESS, INC.,	
Plaintiff,	Adv. Pro. No. 01-01063 (JBR)
v.	
LUCENT TECHNOLOGIES INC.,	
Defendant.	

**STIPULATION BY AND BETWEEN THE TRUSTEE AND
LUCENT TECHNOLOGIES INC. CONCERNING
LUCENT'S RECORD DESIGNATIONS**

WHEREAS, Lucent Technologies Inc. ("Lucent") filed its Appellant's Designation of Items To Be Included In The Record On Appeal (the "Record Designation") on January 19, 2006; and

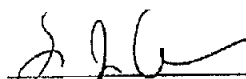
WHEREAS, Christine C. Shubert, chapter 7 Trustee of Winstar Communications, Inc. and Winstar Wireless, Inc. (the "Trustee"), objected to, among other things, Lucent's inclusion in the Record Designation of trial exhibits designated by the parties that were not admitted in evidence at trial; and

WHEREAS, Lucent responded by offering to agree to delete those trial exhibits that were neither offered to the Court (specifically encompassing those forming part of an offer of proof) nor admitted by the Court; and

WHEREAS, given each of the Parties' positions with regard to the trial exhibits, the Court ruled that the Parties are to agree on a list of trial exhibits to be included in the record on appeal.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Parties that Lucent's Record Designation is hereby amended, pursuant to the Court's order dated February 16, 2006, and restated as reflected on exhibit A, which is entitled "Appellant's Amended Designation of Items To Be Included In The Record On Appeal."

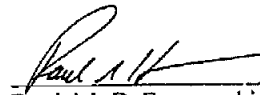
Dated: March 1, 2006
Wilmington, Delaware

 #3821-6
Sheldon K. Rennie (DE Bar No. 3772)
FOX ROTHSCHILD, LLP
Mellon Bank Center, Suite 1400
919 North Market Street
Wilmington, DE 19801-3046
(302) 622-4202

-and-

Stephen M. Rathkopf
David R. King
HERRICK, FEINSTEIN LLP
104 Carnegie Center
Princeton, NJ 08540
(609) 520-9095

Attorneys for the Trustee

 (#3704)
Daniel J. DeFranceschi (DE Bar No. 2732)
Paul N. Heath (DE Bar No. 3704)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7700

-and-

Craig Goldblatt
Michelle Bock
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M. Street, N.W.
Washington, D.C. 20037
(202) 663-6000

-and-

Philip D. Anker
James H. Millar
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

-and-

Paul C. Saunders
Daniel Slifkin
Michael A. Paskin
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

*Attorneys for Defendant
Lucent Technologies Inc.*

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

Winstar v. Lucent
Adversary Proceeding #01-01063-JBR

Tab	Date	Adv. Docket No.	Description of Item
1	04/18/2001	1	COMPLAINT for Injunctive Relief [Filed by Karen C. Bifferato, Atty./PLAINTIFF]
2	04/18/2001	2	MOTION for Preliminary Injunction [Filed by Karen C. Bifferato, Atty./PLAINTIFF] Re: Item # 1
3	04/18/2001	3	MEMORANDUM of Law in Support of Motion for Preliminary Injunction [Filed by Karen C. Bifferato, Atty./PLAINTIFF] Re: Item # 2, [ID]
4	04/18/2001	4	AFFIDAVIT of David W. Ackerman, [ID]
5	04/18/2001	5	AFFIDAVIT of Richard J. Uhl, [ID]
6	04/23/2001	6	EXHIBITS to Affidavit of David W. Ackerman Re: Item # 4
7	04/30/2001	7	STIPULATION AND ORDER [PROPOSED] Regarding Pre-Hearing Schedule [Filed by Karen C. Bifferato, Atty./PLAINTIFF and Paul N. Heath, Atty./DEFENDANT]
8	05/02/2001	8	MOTION for Admission Pro Hac Vice of Werner L. Polak [Filed by Henry E. Gallagher, Jr., Atty./PLAINTIFF] [
9	05/02/2001	9	MOTION for Admission Pro Hac Vice of Sandra Y. Nishikawa [Filed by Henry E. Gallagher, Atty./PLAINTIFF]
10	05/02/2001	10	MOTION for Admission Pro Hac Vice of Roland Schroeder [Filed by Henry E. Gallagher, Atty./PLAINTIFF]
11	05/02/2001	11	SUMMONS and Notice of Pre-Trial Conference on A Date to Be Determined Re: Item # 1
12	05/04/2001	12	ORDER Signed and Located in Original Document Regarding Pre-Hearing Schedule Re: Item # 7
13	05/04/2001	13	COURT'S Letter Regarding Scheduling Re: Item # 12
14	05/04/2001	14	CERTIFICATE of Service Re: Item # 11
15	05/07/2001	15	ORDER Signed and Located in Original Document Granting Admission Pro Hac Vice of Werner L. Polak Re: Item # 8
16	05/07/2001	16	ORDER Signed and Located in Original Document Granting Admission Pro Hac Vice of Sandra Y. Nishikawa Re: Item # 9
17	05/07/2001	17	ORDER Signed and Located in Original Document Granting Admission Pro Hac Vice of Roland Schroeder Re: Item # 10
18	05/08/2001	18	AFFIDAVIT of Service Re: Item # 1 through 5, and #11
19	05/17/2001	19	NOTICE of Service Regarding Discovery [Filed by Henry E. Gallagher, Jr., Atty./PLAINTIFF]
20	05/21/2001	20	MOTION to Dismiss Certain Claims of the Complaint [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT]
21	05/21/2001	21	BRIEF in Support of Motion to Dismiss Certain Claims [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT] Re: Item # 20
22	05/21/2001	22	MOTION to Stay Preliminary Injunction Proceedings Pending Adjudication of Motion to Dismiss and Plaintiffs Right to Assume Prepetition Agreements [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT] Re: Item # 2
23	05/21/2001	23	EMERGENCY Motion to Shorten Notice of Motion to Stay Preliminary Injunction Proceedings [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT] Re: Item # 22
24	05/22/2001	24	COUNSEL'S Letter Regarding Defendant's Request to Extend Pre-Hearing Schedule [Filed by Henry E. Gallagher, Jr., Atty./PLAINTIFF]

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

25	05/24/2001	25	MEMORANDUM of Law in Opposition to Emergency Motion to Shorten Notice and in Opposition to Motion to Stay Preliminary Injunction Proceedings [Filed by Stanley C. Macel, III, Atty./PLAINTIFF] Re: Item # 22
26	05/30/2001	26	REPLY Brief in Support of Motion to Stay Preliminary Injunction Proceedings [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT] Re: Item # 22
27	06/01/2001	27	COUNSEL'S Letter Requesting Emergency Order Regarding Disclosure of Confidential Documents [Filed by Daniel J. DeFranceschi, Atty./DEFENDANT]
28	06/01/2001	28	COUNSEL'S Letter in Response to Letter Regarding Disclosure of Confidential Documents [Filed by Stanley C. Macel, III, Atty./PLAINTIFF] Re: Item # 27
29	06/04/2001	29	ORDER Denying Motion to Stay Preliminary Injunction Pending Adjudication of Motion to Dismiss Re: Item # 22
30	06/04/2001	30	ORDER Regarding Pre-Hearing Schedule Re: Item # 24
31	06/04/2001	31	NOTICE of Service Regarding Discovery [Filed by Paul N. Heath, Atty./DEFENDANT]
32	06/04/2001	32	NOTICE of Service Regarding Discovery [Filed by Paul N. Heath, Atty./DEFENDANT]
33	06/05/2001	33	MEMORANDUM Order Requiring Plaintiff to Advise Defendant of Identity of Employees to Receive Confidential Information and Specific Information and/or Document to be Disclosed Prior to Disclosure Re: Item # 27
34	06/06/2001	34	MEMORANDUM of Law in Opposition to Motion to Dismiss Certain Claims [Filed by Henry E. Gallagher, Jr., Atty./PLAINTIFF] Re: Item # 20
35	06/08/2001	35	AFFIDAVIT of Service Re: Item # 29
36	06/12/2001	36	MOTION To Extend Time. [Filed by Stanley C. Macel, III, Attys./PLAINTIFFS].
37	06/12/2001	37	NOTICE of Motion Re: Item # 36
38	06/12/2001	38	REPLY Brief In Support Of Motion To Dismiss Certain Claims. [Filed by Daniel DeFranceschi, Attys./DEFENDANT]. Re: Item # 20
39	07/10/2001	39	LETTER Stating That Unless Instructed Otherwise, Lucent Does Not Plan To Respond To The Papers Filed by The Plaintiffs [Filed by Daniel J. DeFranceschi] Re: Item # 36
40	07/10/2001	40	REQUEST For Oral Argument Regarding Its Motion To Dismiss Certain Claims. [Filed by Daniel DeFranceschi, Attys./DEFENDANTS]. Re: Item # 20
41	07/10/2001	41	STIPULATION And [Proposed] Protective Order [Filed by Henry E. Gallagher, Jr. Attys./PLAINTIFFS And Daniel DeFranceschi, Atty./DEFENDANT].
42	07/10/2001	42	AFFIDAVIT of Service Re: Item # 33
43	07/10/2001	43	STIPULATION And [Proposed] Order Extending Protective Order To Documents Produced In Response To Subpoena Duces Tecum. [Filed by Werner L. Polak, Attys./PLAINTIFFS, Daniel Slifkin, Attys./DEFENDANT, Steven M. Haber, Attys./NON-PARTY GRANT THORNTON LLP].
44	07/19/2001	44	ORDER Signed and Located in Original Document Re: Item # 41
45	07/19/2001	45	CONSENTED to Order [Signed]. [Scheduling].
46	07/19/2001	46	ORDER Signed and Located in Original Document Extending Protective Order Re: Item # 43
47	08/06/2001	47	Motion to Appear pro hac vice of Olav A. Haazen, Esq. Filed by Stanley C. Macel, III, Esq.
48	08/21/2001	48	Order Granting Motion To Appear pro hac vice (Related Doc # 47)
49	08/24/2001	49	Motion to Compel [Motion of the Official Committee of Unsecured Creditors for an Order to Intervene in the Adversary Proceeding] Filed by Creditors Committee.
50	09/18/2001	50	Certificate of No Objection Filed by Creditors Committee (related document(s)49)
51	09/25/2001	51	Order Authorizing The Creditors Committee to Intervene in the Adversary Proceeding Signed on 9/20/2001 (related document(s)49).

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

52	10/26/2001	52	Notice of Withdrawal Letter to Judge Farnan regarding Notice of Withdrawal of Motion for Preliminary Injunction Filed by WINSTAR COMMUNICATIONS, INC.
53	10/26/2001	53	Notice of Withdrawal of Preliminary Injunction Filed by WINSTAR COMMUNICATIONS, INC.
54	10/26/2001	54	First Amended Complaint Filed by WINSTAR COMMUNICATIONS, INC.
55	11/06/2001	55	Stipulation By LUCENT TECHNOLOGIES, INC. and Between Winstar Communications, et al. (plaintiffs) Filed by LUCENT TECHNOLOGIES, INC. (related document(s)54).
56	12/05/2001	56	Limited Motion to Dismiss Adversary Proceeding [Motion to Dismiss Certain Claims of Plaintiffs' First Amended Complaint] Filed by LUCENT TECHNOLOGIES, INC.
57	12/05/2001	57	Memorandum of Law in Support of Lucent's Motion to Dismiss Certain Claims of Plaintiffs' First Amended Complaint - [Re: Docket No. 56] Filed by LUCENT TECHNOLOGIES, INC.
58	01/18/2002	58	Memorandum of Law In Opposition to Motion of Lucent Technologies, Inc. to Dismiss Certain Claims of Plaintiffs' First Amended Complaint Filed by WINSTAR COMMUNICATIONS, INC.
59	02/12/2002	59	Notice of Appearance in Adversary Proceeding Filed by pro se Aspen Advisors, LLC.
60	02/15/2002	60	Brief Reply Brief in Support of Lucent's Motion to Dismiss Certain Claims of Plaintiffs' First Amended Complaint Filed by LUCENT TECHNOLOGIES, INC.
61	03/19/2002	61	Notice of Filing Notice of Completion of Briefing on Defendant's Motion to Dismiss Filed by LUCENT TECHNOLOGIES, INC.
62	06/21/2002	62	Order signed on 6/19/2002 Reassigning Case To The Honorable John C Akard.
63	06/21/2002	63	Order signed on 6/20/2002 Setting PreTrial Before The Honorable Ronald Barliant On 7/12/02 @ 11:30 A.M.
64	07/03/2002	64	Notice of Appearance in Adversary Proceeding Filed by Christine Shubert.
65	07/11/2002	65	Notice of Agenda of Matters Scheduled for Hearing Filed by Christine Shubert.
66	07/15/2002	66	Proposed Scheduling Order Filed by Christine Shubert. (Rennie, Sheldon) (Entered: 07/15/2002)
67	07/17/2002	67	Notice of Withdrawal of Appearance Filed by Connolly Bove Lodge & Hutz LLP.
68	07/30/2002	68	Order signed on 7/25/2002 Recusing The Honorable John C Akard From Hearing All Matters Pertaining To This Adversary. This Adversary Is Being Transferred To The Honorable Ronald Barliant.
69	09/27/2002	69	Amended Complaint and Jury Demand (Second) Filed by Christine Shubert.
70	10/28/2002	70	Motion to Dismiss Adversary Proceeding Motion of Lucent Technologies Inc to Dismiss Certain claims of the Second Amended Complaint Filed by LUCENT TECHNOLOGIES, INC.
71	10/28/2002	71	Memorandum of Law Memorandum in Support of Lucent's Motion to Dismiss Certain Claims of the Second Amended Complaint Filed by LUCENT TECHNOLOGIES, INC. (related document(s)70).
72	11/18/2002	72	Stipulation By LUCENT TECHNOLOGIES, INC. and Between Plaintiffs Filed by LUCENT TECHNOLOGIES, INC.
73	11/26/2002	73	Memorandum of Law in Opposition to Motion to Dismiss Certain Claims of the Second Amended Complaint Filed by Christine Shubert.
74	12/17/2002	74	Reply Brief in Support of Lucent's Motion to Dismiss Certain Claims of the Second Amended Complaint Filed by LUCENT TECHNOLOGIES, INC. (related document(s)73).

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

75	01/02/2003	75	Notice of Completion of Briefing on Defendant's Motion to Dismiss Filed by LUCENT TECHNOLOGIES, INC..)
76	02/24/2003	76	Notice of Agenda of Matters Scheduled for Hearing (Telephonic Hearing) Filed by Christine Shubert. Hearing scheduled for 3/4/2003 at 03:00 PM
77	03/10/2003	77	Certification of Counsel Regarding Scheduling Order Filed by Christine Shubert
78	03/14/2003	78	Scheduling Order. Signed on 3/13/2003 (related document(s)77)
79	03/18/2003	79	Certificate of Service Notice of Service Filed by Christine Shubert.
80	04/22/2003	80	Notice of Service of Discovery Re: Defendant's Responses and Objections to Plaintiff's First Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC.
81	04/22/2003	81	Notice of Service of Discovery Re: Defendant's Responses and Objection to Plaintiff's Second Request for Production of Documents Filed by LUCENT TECHNOLOGIES, INC
82	05/05/2003	82	Notice of Intended Ruling Concerning Defendant's Motion to Dismiss Parts of the Second Amended Complaint (related document(s)70).
83	05/20/2003	83	Certificate of Service of Plaintiff's Third Request for the Production of Documents, Plaintiff's Second Set of Interrogatories, Plaintiff's Responses to Defendant's First Set of Interrogatories Nos. 1-7, Plaintiff's Responses to Defendant's Second Request for the Production of Documents, Notice of Subpoenas to Deborah Harris and Nina Aversano, Notice of Deposition of Deborah Hopkins, Notice of Deposition to Michael Montemarano, Notice of Deposition of Elizabeth Perricone, and Notice of Deposition of Paul Hayes on May 16, 2003 Filed by Christine Shubert.
84	05/29/2003	84	Opinion Concerning Motion To Dismiss Second Amended Complaint(related document(s)70)
85	05/29/2003	85	Order Granting in Part, Denying in Part Motion of Lucent Technologies Inc to Dismiss Certain Claims of the Second Amended Complaint (Related Doc # 70)
86	06/05/2003	86	Stipulation and [Proposed] Order Between LUCENT TECHNOLOGIES, INC. and Christine C Shuber, Chapter 7 Trustee Filed by LUCENT TECHNOLOGIES, INC..
87	06/06/2003	87	Order Granting Stipulation (Related Doc # 86)
88	06/06/2003	88	Affidavit/Declaration of Service of Rebecca V Childs Re: Docket No. 87 (Signed Stipulation and Proposed Order) (related document(s)87) Filed by LUCENT TECHNOLOGIES, INC.
89	06/09/2003	89	Motion to Reconsider the Court's May 29, 2003 Order Filed by Christine Shubert
90	06/10/2003	90	Notice of Service of Motion for Reconsideration and Memorandum of Law in Support of Motion for Reconsideration and Declaration of David King Filed by Christine Shubert.
91	06/10/2003	91	Notice of Service Filed by Christine Shubert
92	06/18/2003	92	Stipulation and Order Between Christine Shubert and Lucent Technologies, Inc. Filed by Christine Shubert.
93	06/18/2003	93	Notice of Service Re: Defendant's Responses and Objections to Plaintiff's Third Request for the Production of Documents and Defendant's Responses and Objections to Plaintiff's Second Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC.
94	06/30/2003	94	Answer to Amended Complaint Answer and Counterclaims of Defendant Lucent Technologies Inc to Second Amended Complaint (related document(s)69)v, Counterclaim by LUCENT TECHNOLOGIES, INC against WINSTAR COMMUNICATIONS, INC. Filed by LUCENT TECHNOLOGIES, INC.
95	06/30/2003	95	Memorandum of Law in Opposition to Plaintiff's Motion For Reconsideration (related document(s)89) Filed by LUCENT TECHNOLOGIES, INC.
96	07/07/2003	96	Notice of Service Re: Defendant's Supplemental Responses to Plaintiff's Second Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC.
97	07/09/2003	97	Notice of Service Filed by Christine Shubert.

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

98	07/09/2003	98	Reply Memorandum of Law in Support of Motion for Reconsideration Filed by Christine Shubert
99	07/15/2003	99	Answer to Complaint with Counterclaim and Jury Demand Filed by Christine Shubert
100	07/25/2003	100	Notice of Completion of Briefing on Motion of Plaintiff for Reconsideration of the Court's May 9, 2003 Order Filed by Christine Shubert.
101	08/04/2003	101	Certification of Counsel Re. Docket Nos 84 and 85 Filed by LUCENT TECHNOLOGIES, INC.
102	08/07/2003	102	Memorandum Opinion Concerning Motion for Reconsideration Signed on August 7, 2003 (related document(s) 85, 89).
103	08/07/2003	103	Amended Order Concerning Motion to Dismiss. Order Signed on 8/7/2003 (related document(s) 102, 89, 85).
104	08/08/2003	104	Notice of Service Re: Defendant's Responses and Objections to Plaintiff's Fourth Request for the Production of Documents Filed by LUCENT TECHNOLOGIES, INC.
105	08/18/2003	105	Amended Answer to Complaint Amended Answer and Counterclaims of Defendant Lucent Technologies Inc to the Second Amended Complaint, Counterclaim by LUCENT TECHNOLOGIES, INC. against all plaintiffs Filed by LUCENT TECHNOLOGIES, INC.
106	08/21/2003	106	Notice of Service of Discovery Re: Defendant's Third Request for the Production of Documents, Defendant's Second Set of Interrogatories to Plaintiff Nos 8-11, Defendant's First Set of Requests for Admission, Notice of Deposition of Paul Lang, Notice of Deposition of Charles Persing and Notice of Nonparty Discovery Filed by LUCENT TECHNOLOGIES, INC
107	08/21/2003	107	Notice of Service of Discovery Re: Notice of Nonparty Discovery Filed by LUCENT TECHNOLOGIES, INC.
108	10/09/2003	108	Motion to Quash a Subpoena (s) Served by Lucent Technologies Inc. on Chase Manhattan Bank, Citigroup, The Bank of New York, Credit Suisse First Boston, CIBC, and BNY Capital Markets, Inc. and for Protective Order Filed by Christine Shubert (Attachments: # 1 Memorandum of Law# 2 Declaration of Stephen M. Rathkopf# 3 Declaration of David R. King# 4 Exhibit A to Declaration of David R. King# 5 Exhibit B to Declaration of David R. King# 6 Exhibit C to Declaration of David R. King# 7 Exhibit D to Declaration of David R. King# 8 Exhibit E to Declaration of David R. King# 9 Exhibit F to Declaration of David R. King# 10 Proposed Form of Order
109	10/13/2003	109	Affidavit/Declaration of Service of Peter Nathaniel in Support of Plaintiff Christine C. Shubert's Motion to Quash Subpoenas for Protective Order (related document(s)108) Filed by Christine Shubert
110	10/20/2003	110	Motion for Protective Order Filed by Christine Shubert (Attachments: # 1 Memorandum of Law# 2 Declaration of David R. King# 3 Exhibit A to Declaration of David R. King# 4 Exhibit B to Declaration of David R. King# 5 Exhibit C to Declaration of David R. King# 6 Exhibit D to Declaration of David R. King# 7 Exhibit E to Declaration of David R. King# 8 Declaration of George J. Wade# 9 Proposed Form of Order
111	10/20/2003	111	Memorandum of Law in Opposition to Motion of Plaintiff Christine C. Shubert to Quash Subpoenas Served by Lucent Technologies Inc on Chase Manhattan Bank, Citigroup, The Bank of New York, Credit Suisse First Boston, CIBC, and BNY Capital Markets, Inc. and For Protective Order Filed by LUCENT TECHNOLOGIES, INC.
112	10/23/2003	112	Notice of Service Defendant's Responses and Objections to Plaintiff's Fifth Request for Production of Documents Filed by LUCENT TECHNOLOGIES, INC.
113	10/23/2003	113	Exhibit Application of Lucent Technologies, Inc. for Oral Argument (related document(s)108) Filed by LUCENT TECHNOLOGIES, INC.

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

114	10/23/2003	114	Proposed Scheduling Order Amended Scheduling Order Re: Docket No 78 Filed by LUCENT TECHNOLOGIES, INC.
115	10/28/2003	115	Order Approving Amended Scheduling Order. Order Signed on 10/28/2003 (related document(s)78).
116	10/30/2003	116	Stipulation Regarding Briefing Schedule Between LUCENT TECHNOLOGIES, INC. and Christine C. Shubert as Chapter 7 Trustee Filed by LUCENT TECHNOLOGIES, INC.
117	11/03/2003	117	Brief in Further Support of Motion to Quash Subpoenas Served by Lucent Technologies Inc. on Chase Manhattan Bank, Citigroup, The Bank of New York, Credit Suisse First Boston, CIBC, and BNY Capital Markets, Inc. and for Protective Order Filed by Christine Shubert
118	11/03/2003	118	Order Approving Stipulation Regarding Briefing Schedule. Order Signed on 11/3/2003 (related document(s)116).
119	11/06/2003	119	Memorandum of Law of Defendant Lucent Technologies Inc. in Opposition to Plaintiff Christine C. Shubert's Motion for Protective Order Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Declaration of Lillian S. Grossbard# 2 Exhibit A of Declaration# 3 Exhibit B of Declaration# 4 Exhibit C of Declaration (Part I)# 5 Exhibit C of Declaration (Part II)# 6 Exhibit C of Declaration (Part II)# 7 Exhibit D of Declaration# 8 Compendium of Unreported Decisions Cited in Memorandum of Law
120	11/11/2003	120	Amended Reply /Amended Stipulation Regarding Briefing Schedule (related document(s)108) Filed by Christine Shubert (Rennie, Sheldon)
121	11/12/2003	121	Motion for Leave to File Reply Motion of Lucent Technologies Inc. for Leave to File Surreply in Response to Plaintiff's Reply (related document(s)111, 117, 108) Filed by LUCENT TECHNOLOGIES, INC. (related document(s)111, 117, 108) (Attachments: # 1 Exhibit A-Surreply# 2 Declaration of Lillian Grossbard# 3 Unreported Opinions# 4 Exhibit B-Proposed Order
122	11/20/2003	122	Reply Motion for Protective Order Plaintiff's Reply Brief in Further Support of Motion for Protective Order (related document(s)110) Filed by Christine Shubert (related document(s)110).
123	11/24/2003	123	Letter (related document(s)121) Filed by Christine Shubert
124	11/24/2003	124	Proposed Order RE: Stipulation and (Proposed) Order Extending Protective Order to Documents Produced by Non-Party Grant Thornton LLP in Response to Defendant's Subpoena in an Adversary Proceeding Dated October 10, 2003 Filed by LUCENT TECHNOLOGIES, INC.
125	11/26/2003	125	Proposed Scheduling Order SECOND AMENDED SCHEDULING ORDER Filed by LUCENT TECHNOLOGIES, INC.
126	11/26/2003	126	Order and Stipulation Extending Protective Order to Documents Produced by Non-Party Grant Thornton LLP in Response to Defendant's Subpoena in an Adversary Proceeding Dated October 10, 2003. (related document(s)124)
127	12/02/2003	127	Second Amended Scheduling Order Order Signed on 12/1/2003 (related document(s)125, 118).
128	12/03/2003	128	Notice of Service Re: Defendant's Responses and Objections to Plaintiff's Sixth Request for the Production of Documents and Defendant's Responses and Objections to Plaintiff's Third Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC. (
129	12/05/2003	129	Notice of Hearing APPLICATION OF LUCENT TECHNOLOGIES INC FOR ORAL ARGUMENT Filed by LUCENT TECHNOLOGIES, INC..
130	12/17/2003	130	Notice of Hearing Re: Application of Lucent Technologies Inc for Oral Argument [Docket Nos 113 and 129, respectively] Filed by LUCENT TECHNOLOGIES, INC.
131	12/18/2003	131	Notice of Agenda of Matters Scheduled for Hearing Filed by LUCENT TECHNOLOGIES, INC.

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

132	12/18/2003	132	Notice of Service Re: Defendant's Third Set of Interrogatories to Plaintiff Nos. 12-13 Filed by LUCENT TECHNOLOGIES, INC.
133	12/18/2003	133	(WITHDRAWN 1/6/04-SEE DOCKET #135) Notice of Voluntary Dismissal NOTICE OF STIPULATION AND VOLUNTARY DISMISSAL WITH PREJUDICE OF COMPLAINT Filed by LUCENT TECHNOLOGIES, INC.
134	12/19/2003	134	Amended Notice of Agenda of Matters Scheduled for Hearing on December 30, 2003 at 9:30 a.m. Filed by LUCENT TECHNOLOGIES, INC.
135	01/06/2004	135	Notice of Withdrawal re: Notice and Stipulation of Voluntary Dismissal with Prejudice of Complaint (related document(s)133) Filed by LUCENT TECHNOLOGIES, INC.
136	01/12/2004	136	Memorandum Decision on Motion of Plaintiff Christine C. Shubert to Quash Subpoenas by Lucent Technologies Inc. on Chase Manhattan Bank, Citigroup, The Bank of New York, Credit Suisse First Boston, CIBC, and BNY Capital Markets, Inc. and for Protective Order (related document(s)108) -
137	01/12/2004	137	Order Quashing Subpoenas and Granting Protective Relief Order
138	01/12/2004	138	Memorandum of Decision on Plaintiff Christine C. Shubert's Motion for Protective Order
139	01/12/2004	139	Order Granting Protective Relief
140	02/05/2004	140	Notice of Service re: Defendant's Responses and Objections to Plaintiff's Seventh Request for Production of Documents Filed by LUCENT TECHNOLOGIES, INC.
141	02/11/2004	141	Motion to Strike Objections Filed by Christine Shubert (Attachments: # 1 Memorandum in support of Motion to Strike Lucent's Objection to Deposition Testimony# 2 Declaration Part 1# 3 Declaration Part 2# 4 Proposed Form of Order)
142	02/16/2004	142	Certificate of Service Filed by Christine Shubert
143	02/23/2004	143	Memorandum of Law /Memorandum of Defendant Lucent Technologies Inc. in Opposition to Plaintiff's Motion to Strike Lucent's Objection to Deposition Testimony Filed by LUCENT TECHNOLOGIES, INC.
144	02/23/2004	144	Affidavit /Declaration of Lillian S. Grossbard in Support of the Memorandum of Defendant Lucent Technologies Inc. in Opposition to Plaintiff's Motion to Strike Lucent's Objection to Deposition Testimony (related document(s)143) Filed by LUCENT TECHNOLOGIES, INC.
145	03/01/2004	145	Notice of Service Declaration of Service of K. Kaplan re: Notice of Nonparty Discovery Filed by LUCENT TECHNOLOGIES, INC..
146	03/01/2004	146	Stipulation and Order Extending Briefing Schedule Between LUCENT TECHNOLOGIES, INC. and Winstar Communications, Inc., et al. Filed by LUCENT TECHNOLOGIES, INC.
147	03/01/2004	147	Stipulation and [Proposed] Order Extending Protective Order to Testimony Provided by Gary Goldman in Response to Defendant's Subpoena Dated February 12, 2004 and Plaintiff's Subpoena Dated February 12, 2004 As Well As To Any Other Testimony or Discovery Provided by Non-Party Grant Thornton LLP or Any of Its Personnel in Response to any Other Subsequent Subpoenas Served by the Parties in this Matter Between LUCENT TECHNOLOGIES, INC. and Winstar Communications, Inc., et al.. Filed by LUCENT TECHNOLOGIES, INC.
148	03/04/2004	148	Reply Brief Plaintiff's Reply Brief in Further Support of Motion to Strike Lucent's Objection to Deposition Testimony (related document(s)141) Filed by Christine Shubert
149	03/04/2004	149	Certificate of Service Filed by Christine Shubert
150	03/09/2004	150	Order Approving Stipulation and Order Extending Briefing Schedule. Order Signed on 3/8/2004 (related document(s)146).

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151	03/09/2004	151	Order Approving Stipulation and [Proposed] Order Extending Protective Order to Testimony Provided by Gary Goldman in Response to Defendant's Subpoena Dated February 12, 2004 and Plaintiff's Subpoena Dated February 12, 2004 As Well As to Any Other Testimony or Discovery Provided by Non-Party Grant Thornton LLP or Any of Its Personnel in Response to Any Other Subsequent Subpoenas Served by the Parties in This Matter Order Signed on 3/8/2004 (related document(s)147).
152	03/09/2004	152	Notice of Completion of Briefing on Plaintiff's Motion to Strike Lucent's Objection to Deposition Testimony Filed by Christine Shubert.
153	03/25/2004	153	Order Striking Defendant Lucent's Objection to Deposition Testimony (related document(s)141).
154	03/25/2004	154	Motion to Compel Motion of Defendant Lucent Technologies Inc. to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos 12 and 13 Filed by LUCENT TECHNOLOGIES, INC.. (Attachments: # 1 Memorandum in Support# 2 Declaration of Lillian S. Grossbard# 3 Exhibit 1# 4 Exhibit 2# 5 Exhibit 3# 6 Exhibit 4# 7 Exhibit 5# 8 Exhibit 6#
155	03/26/2004	155	Motion for Leave Motion of Defendant Lucent Technologies Inc. for Leave to File a Motion to Amend Its Counterclaims Filed by LUCENT TECHNOLOGIES, INC...
156	03/26/2004	156	Amended Answer to Complaint Second Amended Answer and Counterclaims of Defendant Lucent Technologies Inc. to the Second Amended Complaint, Counterclaim by LUCENT TECHNOLOGIES, INC. against all plaintiffs Filed by LUCENT TECHNOLOGIES, INC (Attachments: # 1 Motion for Leave to Amend Its Counterclaims# 2 Declaration of L. Grossbard in Support of Motion# 3 Exhibit 1 Part 1 of 5# 4 Exhibit 1 Part 2 of 5# 5 Exhibit 1 Part 3 of 5# 6 Exhibit 1 Part 4 of 5# 7 Exhibit 1 Part 5 of 5# 8 Exhibit 2# 9 Exhibit 3# 10 Exhibit 4 Part 1 of 2# 11 Exhibit 4 Part 2 of 2# 12 Exhibit 5# 13 Exhibit 6# 14 Exhibit 7# 15 Exhibit 8# 16 Exhibit 9# 17 Exhibit 10# 18 Exhibit 11# 19 Exhibit 12# 20 Memorandum in Support of Motion)
157	03/30/2004	157	Motion for Protective Order Barring 30(b)(6) Deposition Filed by LUCENT TECHNOLOGIES, INC (Attachments: # 1 Proposed Form of Order # 2 Memorandum -- Part 1# 3 Memorandum -- Part 2# 4 Declaration of Lillian S. Grossbard -- Part 1# (5) of Lillian S. Grossbard -- Part 2)
158	03/31/2004	158	Affidavit/Declaration of Service (related document(s)157) Filed by LUCENT TECHNOLOGIES, INC.
159	03/31/2004	159	Affidavit/Declaration of Service (SUPPLEMENTAL) (related document(s) 157) Filed by LUCENT TECHNOLOGIES, INC.
160	03/31/2004	160	Request to Change Filing Date of Motion to Compel Motion of Defendant Lucent Technologies Inc. to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos 12 and 13 to MARCH 22, 2004. Filed by LUCENT TECHNOLOGIES, INC. (related document(s)154).
161	03/31/2004	161	Notice of Service of Defendant's Responses and Objections to Plaintiff's Eighth Request for the Production of Documents and Defendant's Amended and Supplemental Responses and Objections to Plaintiff's Third Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC.
162	04/06/2004	162	Plaintiff's Memorandum of Law In Opposition To Defendant's Motion to Compel the Trustee To Respond In Full To Defendant's Interrogatory Nos 12 and 13 (related document(s)154) Filed by Christine C. Shubert
163	04/06/2004	163	Declaration of David R. King In Opposition to Defendant's Motion to Compel the Trustee to Respond In Full to Defendant's Interrogatory Nos 12 and 13 (related document(s)162, 154) Filed by Christine C. Shubert
164	04/06/2004	164	Certificate of Service (related document(s)162, 163) Filed by Christine C. Shubert

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165	04/07/2004	165	Notice of Service Re: Defendant's Third Set of Requests for Admissions, Defendant's Fifth Request for the Production of Documents, and Defendant's Fifth Set of Interrogatories to Plaintiff No. 23 Filed by LUCENT TECHNOLOGIES, INC. (
166	04/07/2004	166	Notice of Service Re: Defendant's Responses and Objections to Plaintiff's Ninth Request for the Production of Documents and Defendant's Responses and Objections to Plaintiff's First Request for Admissions Filed by LUCENT TECHNOLOGIES, INC.
167	04/08/2004	167	Letter in Response to Lucents Motion for Leave to File a Second Amended Answer and Counterclaims (related document(s)155) Filed by Christine C Shubert
168	04/09/2004	168	(WITHDRAWN 4/22/04 - SEE DOCKET #174) Motion for Protective Order and Related Documents Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Memorandum of Law# 2 Affidavit of Kelly A. Rocco# 3 Affidavit of Paul C. Saunders with Exhibits 1 & 2# 4 Exhibit 3 to Affidavit of Paul C. Saunders# 5 Exhibit 4 to Affidavit of Paul C. Saunders# 6 Exhibits 5 through 11 to Affidavit of Paul C. Saunders# 7 Exhibit 12 to Affidavit of Paul C. Saunders# 8 Exhibit 13 to Affidavit of Paul C. Saunders
169	04/12/2004	169	Memorandum of Law in opposition to Lucents motion for a protective order barring 30(b)(6) deposition Filed by Christine C. Shubert
170	04/12/2004	170	Memorandum/Brief Declaration of David R. King in opposition to defendants motion for a protective order barring 30(b)(6) deposition (related document(s)169) Filed by Christine C. Shubert
171	04/12/2004	171	Reply Memorandum of Law of Defendant Lucent Technologies Inc. in Support of its Motion to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos. 12 and 13 (related document(s)162, 154) Filed by LUCENT TECHNOLOGIES, INC.
172	04/15/2004	172	Notice of Completion of Briefing on Defendant's Motion to Compel [Re: Docket Nos. 154, 162, 163 and 171] Filed by LUCENT TECHNOLOGIES, INC..
173	04/19/2004	173	Memorandum of Law Reply Memorandum of Law of Defendant Lucent Technologies, Inc. in Support of its Motion for Protective Order Barring 30(b)(6) Deposition Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Declaration of L. Grossbard# 2 Exhibit 10# 3 Exhibit 11# 4 Exhibit 12# 5 Exhibit 13# 6 Exhibit 14# 7 Exhibit 15
174	04/22/2004	174	Notice of Withdrawal of Motion of Defendant Lucent Technologies, Inc. for a Protective Order Quashing the Subpoenas Issued to Paul C. Saunders, Esq., Cravath, Swaine & Moore LLP and PricewaterhouseCoopers LLP and Precluding the Trustee from Taking Further Discovery Regarding an Internal Investigation Conducted by Lucent's Outside Counsel in 2000 (related document(s)168) Filed by LUCENT TECHNOLOGIES, INC.
175	04/23/2004	175	Proposed Scheduling Order (THIRD AMENDED) Filed by LUCENT TECHNOLOGIES, INC.
176	04/27/2004	176	Hearing Held/Court Sign-In Sheet (related document(s)134)
177	04/27/2004	177	Order Denying Third Amended Scheduling Order. (related document 175).
178	04/28/2004	178	Notice of Service re: Defendant's Responses and Objections to Plaintiff's Tenth Request for the Production of Documents Filed by LUCENT TECHNOLOGIES, INC.
179	04/28/2004	179	Notice of Service re: Defendant's Additional Supplemental Response to Interrogatory No. 1 of Plaintiff's Third Set of Interrogatories Filed by LUCENT TECHNOLOGIES, INC.
180	04/29/2004	180	Certification of Counsel (related document(s)156, 155) Filed by LUCENT TECHNOLOGIES, INC.
181	04/30/2004	181	Order Granting Defendant Lucent Technologies Inc.'s Motion for Leave to File a Motion to Amend its Counterclaims. (Related Doc # 155)

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182	04/30/2004	182	Joint Motion to Reconsider [Proposed] Third Amended Scheduling Order or For Order Extending Summary Judgment Briefing Filed by LUCENT TECHNOLOGIES, INC...
183	04/30/2004	183	Letter (related document(s)182) Filed by LUCENT TECHNOLOGIES, INC.
184	05/03/2004	184	Affidavit Second Supplemental Declaration of Lillian S. Grossbard in Support of Motion of Defendant Lucent Technologies Inc. for Protective Order Barring 30(b)(6) Deposition Filed by LUCENT TECHNOLOGIES, INC.
185	05/03/2004	185	Letter Filed by LUCENT TECHNOLOGIES, INC.
186	05/05/2004	186	Motion for Leave Motion of Defendant Lucent Technologies Inc. for Leave to File Memorandum of Law Exceeding Page Limitation Filed by LUCENT TECHNOLOGIES, INC...
187	05/05/2004	187	(WITHDRAWN 5/19/04 - SEE DOCKET #199) Motion for Leave Motion of Defendant Lucent Technologies Inc. to Take the Deposition of Michael Montemarano Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Memorandum in Support of Motion# 2 Declaration of Lillian S. Grossbard# 3 Exhibit A# 4 Exhibit B# 5 Exhibit C# 6 Exhibit D
188	05/07/2004	188	Third Amended Scheduling Order. (related document 182).
189	05/07/2004	189	Supplemental Certification of Counsel (related document(s)156, 155) Filed by LUCENT TECHNOLOGIES, INC.
190	05/07/2004	190	Affidavit Declaration Of David R. King in Opposition To Defendants Motion For Leave To File Memorandum Of Law Exceeding Page Limitation Filed by Christine Shubert
191	05/07/2004	191	Affidavit/Declaration of Service of Heidi L. Brison (related document(s)188) Filed by LUCENT TECHNOLOGIES, INC.
192	05/11/2004	192	Order Granting Defendant Lucent Technologies Inc.'s Motion for Leave to Amend its Counterclaims. (related document(s)156, 155)
193	05/11/2004	193	Order Authorizing Defendant Lucent Technologies Inc. to File Memorandum of Law Exceeding Page Limitation. (related document(s)186)
194	05/12/2004	194	Reply Memorandum of Defendant Lucent Technologies Inc. in Support of its Motion for Leave to Take the Deposition of Michael Montemarano Filed by LUCENT TECHNOLOGIES, INC.
195	05/13/2004	195	WITHDRAWN Notice of Hearing re: Motion of Defendant Lucent Technologies, Inc. to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos. 12 and 13 (related document(s)154) Filed by LUCENT TECHNOLOGIES, INC
196	05/13/2004	196	Notice of Hearing re: Motion of Defendant Lucent Technologies, Inc. for Protective Order Barring 30(b)(6) Deposition (related document(s)157) Filed by LUCENT TECHNOLOGIES, INC.
197	05/14/2004	197	Notice of Withdrawal of Notice of Hearing re: Motion of Defendant Lucent Technologies, Inc. to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos. 12 and 13 (related document(s)195) Filed by LUCENT TECHNOLOGIES, INC.
198	05/14/2004	198	Notice of Hearing re: Motion of Defendant Lucent Technologies, Inc. to Take the Deposition of Michael Montemarano (related document(s)187) Filed by LUCENT TECHNOLOGIES, INC.
199	05/19/2004	199	Notice of Withdrawal re: Motion of Defendant Lucent Technologies Inc. to Take the Deposition of Michael Montemarano (related document(s)187) Filed by LUCENT TECHNOLOGIES, INC.
200	05/19/2004	200	Notice of Completion of Briefing on Defendant's Motion for Protective Order Barring 30(b)(6) Deposition Filed by LUCENT TECHNOLOGIES, INC.
201	05/25/2004	201	Order Denying Motion of Defendant Lucent Technologies Inc. For Protective Order Barring 30(b)(6) Deposition. (Related Doc # 157)

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202	05/25/2004	202	Order (CONSENT) Authorizing Plaintiff Christine C. Shubert, Chapter 7 Trustee of Winstar Communications, Inc. to File Memorandum of Law Exceeding Page Limitation.
203	05/25/2004	203	Order Approving Stipulation Extending Time to Respond to Counterclaim of Lucent Technologies Inc. Order Signed on 5/25/2004.
204	05/25/2004	204	Stipulation By and Between LUCENT TECHNOLOGIES, INC. and The Trustee Concerning The Admissibility of Certain Documents.
205	05/27/2004	205	Reply Answer to Complaint with Counterclaim Reply to Second Amended Counterclaims (related document(s)156) Filed by Christine Shubert
206	06/09/2004	206	Order Denying Motion of Lucent Technologies, Inc. to Compel the Trustee to Respond in Full to Defendant's Interrogatories Nos. 12 and 13 (Related Doc # 154)
207	06/10/2004	207	Stipulation and Proposed Order Dismissing Claims for Relief Without Prejudice Between LUCENT TECHNOLOGIES, INC. and Plaintiff Christine C. Shubert, Chapter 7 Trustee of Winstar Communications, Inc. Filed by LUCENT TECHNOLOGIES, INC.
208	06/11/2004	208	Motion for Withdrawal of Reference Motion of Defendant Lucent Technologies Inc. to Withdraw the Reference to the Bankruptcy Court. Fee Amount \$150 Filed by LUCENT TECHNOLOGIES, INC..
209	06/11/2004	209	Motion to Authorize Motion for an Order Pursuant to Section 107(b) of the Bankruptcy Code, Rule 9018 of the Federal Rules of Bankruptcy Procedure, and Local Rule 5003-1(b) Authorizing Lucent Technologies Inc. to File a Redacted Version of Certain Documents Relating to the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value Filed by LUCENT TECHNOLOGIES, INC.
210	06/11/2004	210	Motion For Summary Judgment Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value Filed by LUCENT TECHNOLOGIES, INC.
211	06/14/2004	211	Receipt of filing fee for Motion for Withdrawal of Reference (A)(01-01063-JBR
212	06/14/2004	212	Memorandum of Law of Defendant Lucent Technologies Inc. in Support of Its Motion for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value (related document(s)210) Filed by LUCENT TECHNOLOGIES, INC.
213	06/14/2004	213	Affidavit Declaration of Kelly A. Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value & Exhibits 1, 2 & 3 (related document(s)210, 212) Filed by LUCENT TECHNOLOGIES, INC. (
214	06/14/2004	214	Exhibit to Declaration of Kelly A Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value & Exhibits 4A-4C (related document(s)210, 212, 213) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 4A Part 2 of 3# 2 Exhibit 4A Part 3 of 3# 3 Exhibit 4B Part 1 of 4# 4 Exhibit 4B Part 2 of 4# 5 Exhibit 4B Part 3 of 4# 6 Exhibit 4B Part 4 of 4# 7 Exhibit 4C Part 1 of 3# 8 Exhibit 4C Part 2 of 3# 9 Exhibit 4C Part 3 of 3)

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215	06/14/2004	215	Exhibit to Declaration of Kelly A Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value & Exhibits 4D-5 (related document(s) 210, 212, 213, 214) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 4D Part 2 of 3# 2 Exhibit 4D Part 3 of 3# 3 Exhibit 4E Part 1 of 3# 4 Exhibit 4E Part 2 of 3# (5) Exhibit 4E Part 3 of 3# 6 Exhibit 4F Part 1 of 2# 7 Exhibit 4F Part 2 of 2# 8 Exhibit 5 Part 1 of 2# 9 Exhibit 5 Part 2 of 2)
216	06/14/2004	216	Exhibit to Declaration of Kelly A Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value & Exhibits 6-63 (related document(s) 210, 212, 213, 214, 215) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 18-28# 2 Exhibit 29-45# 3 Exhibit 46-48# 4 Exhibit 49-50# 5 Exhibit 51-53# 6 Exhibit 54-55# 7 Exhibit 56-58# 8 Exhibit 59-63)
217	06/14/2004	217	Affidavit of Vernon Terrell in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value (related document(s) 210, 212, 213, 214, 215, 216) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3 Part 1 of 3# 4 Exhibit 3 Part 2 of 3# 5 Exhibit 3 Part 3 of 3)
218	06/14/2004	218	Request to Change Filing Date of Affidavit,,, Memorandum of Law,, Affidavit,,, Exhibit,,, Exhibit,,, Exhibit,,, to to June 11, 2004 Filed by LUCENT TECHNOLOGIES, INC.
219	06/15/2004	219	Order Approving Stipulation Dismissing Claims for Relief Without Prejudice. (related document(s) 207)
220	06/15/2004	220	Order Granting Lucent's Motion For an Order Authorizing Lucent Technologies Inc. To File A Redacted Version of Certain Documents Relating To The Motion of Defendant Lucent Technologies Inc. For Summary Judgment on Counts VII,X and XI of The Second Amended Complaint & For Partial Summary Judgment on Lucent's Affirmative Defense on New Value (Related Doc # 209)
221	06/15/2004	221	CONFIDENTIAL - UNREDACTED DOCUMENTS - FILED UNDER SEAL: Unredacted Declaration of Kelly A. Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value [With Accompanying Unredacted Exhibits 1-28 and Exhibits 46-63] Re: (related document(s) 220, 209) Filed by LUCENT TECHNOLOGIES, INC. (JSJ,) Modified on 7/1/2004 IMAGE REVISED TO REFLECT DESCRIPTION OF CONTENTS OF BOX(MAS,) Additional attachment(s) added on 7/1/2004
222	06/21/2004	222	Stipulation and Order Extending Briefing Schedule on Motion to Withdraw the Reference Between LUCENT TECHNOLOGIES, INC. and Plaintiff Christine C. Shubert, Chapter 7 Trustee of Winstar Communications, Inc., and Winstar Wireless, Inc.. Filed by LUCENT TECHNOLOGIES, INC.
223	06/22/2004	223	Notice of Service CERTIFICATE OF SERVICE re: Unredacted Exhibits 29-45 to Declaration of Kelly A. Rocco in Support of the Motion of Defendant Lucent Technologies, Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value Filed by LUCENT TECHNOLOGIES, INC.
224	06/22/2004	224	Notice of Service NOTICE OF ERRATA AND FILING OF UNREDACTED EXHIBITS (related document(s) 213) Filed by LUCENT TECHNOLOGIES, INC.
225	06/25/2004	225	Order Approving Stipulation Extending Briefing Schedule on Motion to Withdraw the Reference. (related document(s) 222)

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226	06/29/2004	226	Motion to Strike Lucent Technologies, Inc.'s Designation of Materials as Confidential, Motion to Vacate (to the Extent Necessary) and/or Reconsider Order Granting Lucent's Motion for an Order Authorizing Lucent Technologies Inc. to File a Redacted Version of Certain Documents Relating to the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense on New Value Filed by Christine Shubert. (Attachments: # 1 Exhibit "A"# 2 Exhibit "B"# 3 Proposed Form of Order
227	07/01/2004	227	CONFIDENTIAL - UNREDACTED DOCUMENTS - FILED UNDER SEAL: Unredacted Exhibits 29-45 to the Unredacted Declaration of Kelly A. Rocco in Support of the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value filed contemporaneously with the Notice of Errata and Filing of Unredacted Exhibits filed on June 22, 2004 (related document(s)220, 209, 216) Filed by LUCENT TECHNOLOGIES, INC.
228	07/09/2004	228	Stipulation FURTHER STIPULATION AND ORDER EXTENDING BRIEFING SCHEDULE ON MOTION TO WITHDRAW THE REFERENCE Between Christine Shubert and LUCENT TECHNOLOGIES, INC.. (related document(s)208) Filed by Christine Shubert
229	07/12/2004	229	Response to Motion of Chapter 7 Trustee for Order, Inter Alia, Striking Lucent Technologies Inc.'s Designation of Materials as Confidential (related document(s)226) Filed by LUCENT TECHNOLOGIES, INC.
230	07/14/2004	230	Brief PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO LUCENT'S MOTION TO WITHDRAW THE REFERENCE (related document(s)208) Filed by Christine Shubert (Attachments: # 1 Declaration DECLARATION OF ANDREW C GOLD IN CONNECTION WITH TRUSTEES OPPOSITION TO LUCENT'S MOTION TO WITHDRAW THE REFERENCE# 2 Exhibit EXHIBIT A-C Proofs of Claims
231	07/15/2004	231	Order And Further Stipulation Extending Briefing Schedule On Motion To Withdraw The Reference. (Related Doc # 228)
232	07/19/2004	232	Notice of Service NOTICE OF FILING OF REVISED REDACTED DOCUMENTS (related document(s)229, 212, 213, 214, 215, 216, 226) Filed by LUCENT TECHNOLOGIES, INC. (related document(s)229, 212, 213, 214, 215, 216, 226).
233	07/19/2004	233	Exhibit to Notice of Filing of Revised Redacted Documents (related document(s)232) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1 Part 2# 2 Exhibit 1 Part 3# 3 Exhibit 2 Part 1# 4 Exhibit 2 Part 2# 5 Exhibit 2 Part 3# 6 Exhibit 3)
234	07/19/2004	234	Exhibit to Notice of Filing of Revised Redacted Documents (related document(s)232) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 4 Part 2# 2 Exhibit 4 Part 3# 3 Exhibit 4 Part 4# 4 Exhibit 4 Part 5# 5 Exhibit 4 Part 6)
235	07/19/2004	235	Exhibit to Notice of Filing of Revised Redacted Documents (related document(s)232) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 4 Part 8# 2 Exhibit 4 Part 9# 3 Exhibit 4 Part 10# 4 Exhibit 4 Part 11# 5 Exhibit 4 Part 12# 6 Exhibit 4 Part 13)
236	07/19/2004	236	Exhibit to Notice of Filing of Revised Redacted Documents (related document(s)232) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 7-19# 2 Exhibit 20-34# 3 Exhibit 35-44# 4 Exhibit 45-50# 5 Exhibit 51-56# 6 Exhibit 57-60# 7 Exhibit 61-63)

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237	07/23/2004	237	Memorandum of Law of Defendant Lucent Technologies Inc. in Support of its Motion to Withdraw the Reference to the Bankruptcy Court (related document(s)208) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Attachment (Unreported Decisions))
238	07/28/2004	238	Stipulation and Order Extending Briefing Schedule on Motion to Withdraw the Reference Between LUCENT TECHNOLOGIES, INC. and Christine C. Shubert, Chapter 7 Trustee for Winstar Communications, Inc., et al. (related document(s)230) Filed by LUCENT TECHNOLOGIES, INC. (related document(s)230).
239	08/02/2004	239	Order Approving Further Stipulation and Order Extending Briefing Schedule on Motion to Withdraw the Reference. (related document(s)238)
240	08/04/2004	240	Reply Memorandum of Law of Defendant Lucent Technologies Inc in Support of its Motion to Withdraw the Reference to the Bankruptcy Court (related document(s)208) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Attachment (Unreported Cases))
241	08/05/2004	241	Notice of Hearing APPLICATION OF LUCENT TECHNOLOGIES INC. FOR ORAL ARGUMENT (related document(s)208) Filed by LUCENT TECHNOLOGIES, INC.
242	08/09/2004	242	Transmittal to the U.S. District Court, District of Delaware of the Motion to Withdraw the Reference (related document(s)237, 241, 222, 228, 238, 239, 240, 225, 230, 231, 208)
243	08/10/2004	243	Notice of Receipt of Record for Motion to Withdraw the Reference (U.S.D.C. Civil Action No. 04-928) (related document(s)242) Filed by U.S. District Court, District of Delaware
244	08/10/2004	244	Notice of Docketing Motion to Withdraw the Reference (U.S.D.C. Civil Action No. 04-928)
245	08/11/2004	245	Notice of Completion of Briefing Re: Docket No. 208 Filed by LUCENT TECHNOLOGIES, INC.
246	08/13/2004	246	Stipulation and Proposed Order Resolving Motion of Chapter 7 Trustee for an Order Striking Lucent Technologies Inc's Designation of Materials as Confidential and Related Relief Between LUCENT TECHNOLOGIES, INC. and Plaintiff Christine C. Shubert, Chapter 7 Trustee of Winstar Communications, Inc. Filed by LUCENT TECHNOLOGIES, INC.
247	08/13/2004	247	Memorandum of Law in Opposition to Lucent's Motion for Summary Judgment Filed by Christine C. Shubert
248	08/13/2004	248	Affidavit/Declaration of Service of Stephen J. Scherf in Opposition to Defendant's Motion for Summary Judgment (related document(s)247) Filed by Christine C. Shubert (Attachments: # 1 Declaration : Part 2# 2 Declaration : Part 3# 3 Declaration : Part 4# 4 Declaration : Part 5)
249	08/13/2004	249	Affidavit/Declaration of Service of David R. King in Opposition to Defendant's Motion for Summary Judgment (Volume 1 of 4) (related document(s)247) Filed by Christine C. Shubert (Attachments: # 1 Volume(s) 1 of 4: Part 2# 2 Volume(s) 1 of 4: Part 3# 3 Volume(s) 1 of 4: Part 4# 4 Volume(s) 1 of 4: Part 5# 5 Volume(s) 1 of 4: Part 6# 6 Volume(s) 1 of 4: Part 7# 7 Volume(s) 1 of 4: Part 8# 8 Volume(s) 1 of 4: Part 9# 9 Volume(s) 1 of 4: Part 10)
250	08/13/2004	250	Affidavit/Declaration of Service of David R. King in Opposition to Defendant's Motion for Summary Judgment (Volume 2 of 4) (related document(s)247) Filed by Christine Shubert (Attachments: # 1 Volume(s) 2 of 4: Part 2)
251	08/13/2004	251	Affidavit/Declaration of Service of David R. King in Opposition to Defendant's Motion for Summary Judgment (Volume 3 of 4) (related document(s)247) Filed by Christine Shubert (Attachments: # 1 Volume(s) 3 of 4: Part 2# 2 Volume(s) 3 of 4: Part 3)

EXHIBIT A

**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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252	08/13/2004	252	Affidavit/Declaration of Service of David R. King in Opposition to Defendant's Motion for Summary Judgment (Volume 4 of 4) (related document(s)247) Filed by Christine Shubert (Attachments: # 1 Volume(s) 4 of 4: Part 2# 2 Volume(s) 4 of 4: Part 3)
253	08/17/2004	253	Order (Proposed) And Stipulation Resolving Motion Of Chapter 7 Trustee For An Order Striking Lucent Technologies Inc.'s Designation Of Materials As Confidential And Related Relief. (Related Doc # 246)
254	08/18/2004	254	Transmittal to the U.S. District Court, District of Delaware of Docket Entry No 245 (U.S.D.C. Civil Action No. 04-928) (related document(s)245)
255	08/23/2004	255	Notice of Receipt of Record of Docket Entry No. 245 (U.S.D.C. Civil Action No 04-928 -JIF) (related document(s)245) Filed by U.S. District Court, District of Delaware
256	09/10/2004	256	Motion to Allow Motion for an Order Pursuant to Section 107(b) of the Bankruptcy Code, Rule 9018 of the Federal Rules of Bankruptcy Procedure, and Local Rule 5003-(b) Authorizing Lucent Technologies Inc. to File a Redacted Version of Certain Documents Relating to the Motion of Defendant Lucent Technologies Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value Filed by LUCENT TECHNOLOGIES, INC..
257	09/10/2004	257	Memorandum of Law Reply Memorandum of Law of Defendant Lucent Technologies Inc. in Further Support of Its Motion for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value (related document(s)210) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Attachment (Unreported Cases)# 2 Certificate of Service for Reply Memorandum# 3 Declaration of Iddo Harel (part 1 of 2)# 4 Declaration of Iddo Harel (part 2 of 2)# 5 Certificate of Service for Declaration of Iddo Harel# 6 Affidavit of Fred Rubin# 7 Certificate of Service for Affidavit of Fred Rubin# 8 Declaration of David R. Baum
258	09/15/2004	258	Letter SUR REPLY IN RESPONSE TO LUCENTS REPLY BRIEF RE MOTION FOR SUMMARY JUDGMENT Filed by Christine Shubert (Attachments: # 1 Exhibit SUPPLEMENTAL DECLARATION OF DAVID R. KING)
259	09/21/2004	259	Notice of Completion of Briefing and Plaintiffs Request for Oral Argument on Motion of Defendant Lucent Technologies, Inc. for Summary Judgment on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value Filed by Christine C. Shubert.
260	09/21/2004	260	Notice of Service NOTICE OF ERRATA (related document(s)232) Filed by LUCENT TECHNOLOGIES, INC.
261	09/24/2004	261	Motion for Leave Motion of Lucent Technologies Inc. for Leave to File Response to Plaintiff's Sur-Reply Letter Filed by LUCENT TECHNOLOGIES, INC. (related document(s)258).
262	09/24/2004	262	Response to Plaintiff's Sur-Reply Letter (related document(s)258) Filed by LUCENT TECHNOLOGIES, INC.
263	09/27/2004	263	Letter Response to Lucent's Motion for Leave to Respond to Sur-reply (related document(s)261) Filed by Christine Shubert
264	09/29/2004	264	Letter Regarding Trustee's 9/27/04 Letter Requesting Oral Argument and Disposition of Lucent's Summary Judgment Motion (related document(s)263) Filed by LUCENT TECHNOLOGIES, INC.
265	09/30/2004	265	Letter re: oral argument Filed by Christine Shubert
266	10/07/2004	266	Order Refraining this Court from Taking and Action until the District Court Acts on Defendant's Motion to Withdraw the Reference Signed on 10/6/2004.
267	11/03/2004	267	Joint Motion to Approve Joint Motion for Court to Enter Fourth Amended Scheduling Order Filed by LUCENT TECHNOLOGIES, INC...

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

268	11/18/2004	268	COPY OF DISTRICT COURT Memorandum Opinion Denying the Motion of Defendant Lucent Technologies, Inc. to Withdraw the Reference (related document(s)208)
269	11/18/2004	269	COPY OF DISTRICT COURT Order Denying Motion For Withdrawal Of Reference(Related Doc # 208) Order Signed on 11/16/2004. (MAS,)
270	11/18/2004	270	Letter To The Honorable Joel B. Rosenthal re: Oral Argument and Proposed Sched. Order Filed by Christine Shubert
271	12/06/2004	271	Letter The Honorable Joel B. Rosenthal - Lucent's Motion Filed by Christine C. Shubert (Rennie, Sheldon)
272	12/07/2004	272	Notice of Agenda of Matters Scheduled for Hearing Filed by Christine C. Shubert.
273	12/15/2004	273	Order On Motion for Summary Judgment of Defendant Lucent Technologies Inc. on Counts VII, X and XI of the Second Amended Complaint and for Partial Summary Judgment on Lucent's Affirmative Defense of New Value. (related document(s)210)
274	01/05/2005	274	Transcript of Hearing held on December 14, 2004 before the Honorable Joel B. Rosenthal. (related document(s)272)
275	01/26/2005	275	PreTrial Order Trial date set for 3/21/2005 at 09:30 AM at Alternate Meeting Site Signed on 1/26/2005. (LCN,)
276	02/03/2005	276	ENTERED IN ERROR -- Order Reassigning Adversary Proceeding to the Honorable Donal D. Sullivan. Order Signed on 2/1/2005 (BJM) Modified on 2/7/2005
277	02/14/2005	277	Second Pretrial Order. Signed on 2/10/2005.
278	02/28/2005	278	Motion in Limine Filed by Christine C. Shubert. (Attachments: # 1 Declaration Of David R. King in Support of Plaintiffs In Limine Motion# 2 Exhibit A To Declaration of David R. King in Support of Plaintiffs In Limine Motion# 3 Exhibit B to Declaration of D. King - Motion In Limine - W# 4 Certificate of Service of Plaintiffs In Limine Motion with attached Exhibits)
279	02/28/2005	279	Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 1: To Exclude Certain Expert Testimony of Paul W. Pocalyko Pursuant to Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharms. Inc. Filed by LUCENT TECHNOLOGIES, INC.; Modified on 3/1/2005
280	02/28/2005	280	Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 2: To Exclude the Expert Testimony of Robert E. Ott Pursuant to Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharms, Inc. Filed by LUCENT TECHNOLOGIES, INC..
281	02/28/2005	281	Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 3: To Exclude Certain Expert Testimony of Stephen J. Scherf Pursuant to Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharms. Inc. Filed by LUCENT TECHNOLOGIES, INC.. (Modified on 3/1/2005).
282	02/28/2005	282	Memorandum of Law in Support of Lucent Technologies Inc.'s Motions In Limine Nos. 1, 2 & 3: To Exclude Certain Expert Testimony of Paul W. Pocalyko, Robert E. Ott and Stephen J. Scherf Pursuant to Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharms. Inc. Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Attachment Part 1# 2 Attachment Part 2#
283	02/28/2005	283	Declaration of Gerald Ford in Support of Defendant Lucent Technologies Inc.'s Motions In Limine Nos. 1, 2 & 3: To Exclude Certain Expert Testimony of Paul W. Pocalyko, Robert E. Ott, and Stephen J. Scherf Pursuant to Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharms. Inc. Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1# 2 Exhibit 2-3# 3 Exhibit 4-6# 4 Exhibit 7-11# 5 Certificate of Service and Service List)

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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284	02/28/2005	284	Motion in Support of Defendant Lucent Technologies Inc.'s Motion In Limine No. 4: To Exclude Evidence of Transactions Unrelated to the Siemens Transaction Filed by LUCENT TECHNOLOGIES, INC; Modified on 3/1/2005
285	02/28/2005	285	Memorandum of Law of Defendant Lucent Technologies Inc. in Support of Its Motion In Limine No. 4: To Exclude Evidence of Transactions Unrelated to the Siemens Transaction Filed by LUCENT TECHNOLOGIES, INC.
286	02/28/2005	286	Declaration of Gerald A. Ford in Support of Defendant Lucent Technologies Inc.'s Motion In Limine No. 4: To Exclude Evidence of Transactions Unrelated to the Siemens Transaction Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Certificate of Service and Service List) (Booth, Rebecca) Modified on 3/1/2005
287	03/07/2005	287	Memorandum of Law of Defendant Lucent Technologies Inc. In Opposition to Plaintiffs In Limine Motion Filed by LUCENT TECHNOLOGIES, INC.
288	03/07/2005	288	Declaration of David Roy Rigotti Filed by LUCENT TECHNOLOGIES, INC.; Modified on 3/8/2005
289	03/07/2005	289	Declaration of Michael A. Paskin in Opposition to Plaintiffs In Limine Motion Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10
290	03/07/2005	290	Memorandum of Law in Opposition to Lucent's Motion In Limine Nos 1, 2 & 3 Filed by Christine C. Shubert (Attachments: # 1 Declaration Declaration of Stephen J. Scherf
291	03/07/2005	291	Memorandum of Law in Opposition to Lucent's Motion In Limine No. 4 Filed by Christine C. Shubert (Attachments: # 1 Declaration of Stephen J. Scherf# 2 Declaration of David R. King Part 1# 3 Declaration of David R. King Part 2# 4 Declaration of David R. King Part 3# 5 Declaration of David R. King Part 4# 6 Declaration of David R. King Part 5# 7 Declaration of David R. King Part 6# 8 Declaration of David R. King Part 7# 9 Declaration of David R. King Part 8# 10 Declaration of David R. King Part 9# 11 Declaration of David R. King Part 10
292	03/07/2005	292	Joint Pretrial Memorandum Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10# 11 Exhibit 11# 12 Exhibit 12# 13 Exhibit 13# 14 Exhibit 14# 15 Exhibit 15; Modified on 3/11/2005
293	03/07/2005	293	Appendix A to Joint Pretrial Memorandum (related document(s)292) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Part 2# 2 Part 3# 3 Part 4# 4 Part 5)
294	03/08/2005	294	Order: Notice Of Non-Evidentiary Hearing Hearing will be held on Wednesday, March 16, 2005 at 2:00PM at the Harold Donohue Federal Courthouse, 595 Main Street, Worcester, Massachusetts, Courtroom No. 3. (related document(s)281, 278, 279, 280, 284)
295	03/10/2005	295	Plaintiff's Pre-Trial Memorandum of Law Filed by Christine C. Shubert
296	03/10/2005	296	Defendant Lucent Technologies Inc.'s Trial Brief Filed by LUCENT TECHNOLOGIES, INC.
297	03/11/2005	297	Motion to Appear pro hac vice of Barry Werbin Receipt Number 138442, Fee Amount \$25. Filed by Christine C. Shubert. (
298	03/15/2005	298	Order Granting Motion To Appear pro hac vice of (Barry Werbin, Esq) (Related Doc # 297)
299	03/16/2005	299	Plaintiff Christine C. Shubert's Proposed Bridge Statements Filed by Christine C. Shubert
300	03/17/2005	300	Order Allowing Plaintiff's Motion in Limine. (Related Doc # 278)

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301	03/17/2005	301	Order Denying Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 1: To Exclude Certain Expert Testimony of Paul W. Pocalyko and Daubert V. Merrell Dow Pharms. Inc. (Related Doc # 279)
302	03/17/2005	302	Order Denying Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 2: To Exclude the Expert Testimony of Robert E. Ott and Daubert v Merrell Dow Pharms, Inc. (Related Doc # 280)
303	03/17/2005	303	Order Denying Motion in Support of Lucent Technologies Inc.'s Motion In Limine No. 3: To Exclude Certain Expert Testimony of Stephen J. Scherf and Daubert v Merrell Dow Pharms. Inc. (Related Doc # 281)
304	03/17/2005	304	Order Denying Motion in Support of Defendant Lucent Technologies Inc.'s Motion In Limine No. 4: To Exclude Evidence of Transactions Unrelated to the Siemens Transaction. (Related Doc # 284)
305	03/17/2005	305	Defendant Lucent Technologies Inc.'s Bridge Statements for Deposition Testimony Filed by LUCENT TECHNOLOGIES, INC.
306	03/18/2005	306	Motion to Appear pro hac vice of Lillian S. Grossbard of Cravath, Swaine & Moore Receipt Number 138530, Fee Amount \$25 Filed by LUCENT TECHNOLOGIES, INC..
307	03/18/2005	307	Motion to Appear pro hac vice of Michael A. Paskin of Cravath, Swaine & Moore Receipt Number 138530, Fee Amount \$25 Filed by LUCENT TECHNOLOGIES, INC..
308	03/21/2005	308	Stipulation By and Between LUCENT TECHNOLOGIES, INC. and The Trustee Concerning the Admissibility of Certain Documents and Deposition Testimony. Filed by LUCENT TECHNOLOGIES, INC..
309	03/22/2005	309	Stipulation (Joint) as to Additional Uncontested Facts Between LUCENT TECHNOLOGIES, INC. and the Trustee Filed by LUCENT TECHNOLOGIES, INC.
310	04/04/2005	310	Order of Impoundment Granting Counsel for Each Party an Unredacted Copy of the Underseal Trial Transcript. Signed on 4/4/2005.
311	04/06/2005	311	Motion to Appear pro hac vice of Susan Swatski Receipt Number 138750, Fee Amount \$25. Filed by Christine C. Shubert.
312	04/07/2005	312	Order Granting Motion To Appear pro hac vice of (Susan Swatski, esq.) (Related Doc # 311)
313	04/12/2005	313	Notice of Filing Documents Under Seal Filed by LUCENT TECHNOLOGIES, INC.
314	04/12/2005	314	Motion to File Under Seal Motion of Defendants Lucent Technologies Inc. to File Under Seal its Motion for Reconsideration of the Court's April 4, 2005, Order of Impoundment (related document(s)313) Filed by LUCENT TECHNOLOGIES, INC. (related document(s)313).
315	04/12/2005	315	Renewed Motion of Lucent Technologies Inc. to Exclude the Testimony of Paul Pocalyko Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 Attachment Memorandum in Support of Motion
316	04/15/2005	316	AMENDMENT To Order of Impoundment. (related document(s)310)
317	04/15/2005	317	Order Granting Defendant Lucent Technologies Inc. Leave to File Under Seal its Motion for Reconsideration of the Court's April 4, 2005, Order of Impoundment (Related Doc # 314)
318	04/15/2005	318	{DOCUMENTS FILED UNDER SEAL} Motion of Defendant Lucent Technologies Inc. to File Under Seal its Motion for Reconsideration of the Court's April 4, 2004, Order of Impoundment. (related document(s) 317).
319	04/15/2005	319	Certificate of Service Filed by LUCENT TECHNOLOGIES, INC.
320	04/20/2005	320	Letter to The Honorable Joel B. Rosenthal re: TIMELINE Filed by Christine C. Shubert
321	04/20/2005	321	Scheduling Order. Signed on 4/20/2005.

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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322	04/20/2005	322	Transcript of Motions Hearing held on March 16, 2005 before the Honorable Joel B. Rosenthal
323	04/20/2005	327	Letter In Response To Defendant's Motion for Reconsideration of the Court's April 4, 2005 Order of Impoundment (related document(s)314) Filed by Christine C Shubert
324	04/20/2005	328	Memorandum of Law In Opposition to Lucent's Renewed Motion To Exclude The Testimony of Paul Pocalyko (related document(s)315) Filed by Christine C. Shubert (Attachments: # 1 Certificate of Service of Trustee's Memorandum of Law in Opposition to Lucent's Renewed Motion to Exclude The Testimony of Paul Pocalyko)
325	04/26/2005	329	ENTERED IN ERROR (See Amended Order in lead Bk case docket #4410)Order Reassigning Adversary Proceeding To The Honorable Donal D. Sullivan. Signed on 2/1/2005. (Attachments: # 1 Exhibit A)
326	04/26/2005	330	Letter to The Honorable Joel B. Rosenthal re: Revised Timeline (related document(s)320) Filed by Christine C. Shubert
327	04/26/2005	331	Stipulation Renumbered Joint Stipulation Between LUCENT TECHNOLOGIES, INC. and Christine C. Shubert, Chapter 7 Trustee for Winstar Communications, Inc., et al. as to Uncontested Facts. Filed by LUCENT TECHNOLOGIES, INC.. (
328	04/27/2005	332	Letter to The Honorable Joel B. Rosenthal re: Chronology of Events Filed by LUCENT TECHNOLOGIES, INC.
329	05/04/2005	333	Order (REVISIONS BY THE COURT) Denying Renewed Motion of Lucent Technologies Inc. to Exclude the Testimony of Paul Pocalyko. (Related Doc # 315)
330	05/04/2005	334	Order (REVISIONS BY THE COURT) Granting Motion of Defendant Lucent Technologies Inc. for Reconsideration of the Court's April 4, 2005 Order of Impoundment. (related document(s)310, 316)
331	05/20/2005	335	Stipulation Concerning the Submission of Joint Trial Exhibits Between LUCENT TECHNOLOGIES, INC. and The Trustee. Filed by LUCENT TECHNOLOGIES, INC..
332	05/23/2005	336	Scheduling Order (SECOND). Signed on 5/18/2005.
333	05/23/2005	337	Stipulation By and Between LUCENT TECHNOLOGIES, INC. and Christine C. Shubert, Chapter 7 Trustee for Winstar Communications, Inc., et al. Concerning Lucent's Counterclaim for Setoff. Filed by LUCENT TECHNOLOGIES, INC.
334	06/06/2005	339	Findings of Fact and Conclusions of Law Filed by Christine C. Shubert (Attachments: # 1 TRUSTEE'S PROPOSED CONCLUSION OF LAW# 2 Exhibit Exhibit A and B to Conclusions of Law# 3 Exhibit Exhibits C through E to Conclusions of Law - WINSTAR)
335	06/06/2005	340	Findings of Fact and Conclusions of Law (Proposed) Filed by LUCENT TECHNOLOGIES, INC. (Attachments: # 1 PART 2# 2 PART 3# 3 PART 4# 4 PART 5# 5 Unpublished Opinions PART 1# 6 Unpublished Opinions PART 2# 7 Unpublished Opinions PART 3
336	06/08/2005	341	Letter to the Honorable Joel B. Rosenthal - Trustee's Objection To Portions of Lucent's Findings of Facts and Conclusions Filed by Christine C. Shubert
337	06/09/2005	342	Letter Filed by LUCENT TECHNOLOGIES, INC.
338	06/09/2005	343	Letter Filed by LUCENT TECHNOLOGIES, INC.
339	06/10/2005	344	Letter Filed by LUCENT TECHNOLOGIES, INC.
340	06/10/2005	345	Letter to the Honorable Joel B. Rosenthal - Lucent Has Not Consented To Court's Entry of Final Order... Filed by Christine C. Shubert
341	06/10/2005	346	Letter to the Honorable Joel B. Rosenthal - Citations to Video Deposition Testimony.. Filed by Christine C. Shubert
342	06/10/2005	347	Letter Filed by LUCENT TECHNOLOGIES, INC.
343	06/15/2005	348	Letter Filed by LUCENT TECHNOLOGIES, INC.
344	06/15/2005	349	Letter to Judge Rosenthal Filed by Christine C. Shubert

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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345	06/20/2005	350	Order and Notice Regarding the Sending of Letters to the Court.
346	08/15/2005	368	Letter dated 8/8/05 from David R. King, Esq. to advise the court that mailing address has changed. Filed by Christine C. Shubert
347	12/21/2005	369	Memorandum of Decision Including Findings of Fact and Conclusions of Law With Respect to Counts VII, X, and XI of the Second Amended Complaint and Counts 5 and 6 of the Second Amended Answer and Counterclaims. Signed on 12/21/2005. (related document(s)259, 210, 209, 212, 257) (JMP,)
348	12/21/2005	370	Order Regarding Memorandum of Decision Including Findings of Fact and Conclusions of Law With Respect to Counts VII, X, and XI of the Second Amended Complaint and Counts 5 and 6 of the Second Amended Answer and Counterclaims.(related document(s)369)
349	12/23/2005	371	Notice of Appearance and Demand for Service of Papers Filed by LUCENT TECHNOLOGIES, INC..
350	12/23/2005	372	Motion to Appear pro hac vice of Craig T. Goldblatt of Wilmer Cutler Pickering Hale and Don LLP. Receipt Number 141626, Fee Amount \$25. Filed by LUCENT TECHNOLOGIES, INC..
351	12/28/2005	373	Order Entering Judgment. (related document(s)370)
352	01/03/2006	374	Order Granting Motion for Admission pro hac vice of Craig T. Goldblatt (Related Doc # 372)
353	01/03/2006	375	Conditional Objection of Lucent Technologies Pursuant to Rule 9033(b) to any "Proposed" Findings of Fact and Conclusions of Law Made by the Bankruptcy Court (related document(s)369, 373) Filed by LUCENT TECHNOLOGIES, INC.
354	01/06/2006	376	Stipulation (Joint) Regarding Ten Day Stay of Execution of Judgment By LUCENT TECHNOLOGIES, INC., Christine C. Shubert Filed by LUCENT TECHNOLOGIES, INC., Christine C. Shubert
355	1/09/2006	377	Notice of Appeal (from final judgment entered 12/28/05). Fee Amount \$255. (related document(s)373) Filed by LUCENT TECHNOLOGIES, INC. Appellant Designation due by 1/19/2006.

Trial Transcripts

Tab	Date	Adv. Docket No.	Description of Item
356	04/20/2005	323	Transcript of Trial (Volume I) held on March 21, 2005 before the Honorable Joel B. Rosenthal.
357	04/20/2005	324	Transcript of Trial (Volume II) held on March 22, 2005 before the Honorable Joel B. Rosenthal.
358	06/01/2005	338	Transcript of Trial (Volume III) held on March 23, 2005 before the Honorable Joel B. Rosenthal.
359	04/20/2005	325	Transcript of Trial (Volume IV) held on March 24, 2005 before the Honorable Joel B. Rosenthal.
360	04/20/2005	326	Transcript of Trial (Volume V) held on March 25, 2005 before the Honorable Joel B. Rosenthal.
361	06/29/2005	351	Transcript of Trial (Volume VI) held on March 28, 2005 before the Honorable Joel B. Rosenthal.
362	06/29/2005	352	Transcript of Trial (Volume VII) held on March 29, 2005 before the Honorable Joel B. Rosenthal.
363	06/29/2005	353	Transcript of Trial (Volume VIII) held on March 30, 2005 before the Honorable Joel B. Rosenthal.
364	06/29/2005	354	Transcript of Trial (Volume IX) held on March 31, 2005 before the Honorable Joel B. Rosenthal.

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365	06/29/2005	355	Transcript of Trial (Volume X) held on April 1, 2005 before the Honorable Joel B. Rosenthal.
366	06/29/2005	356	Transcript of Trial (Volume XI) held on April 11, 2005 before the Honorable Joel B. Rosenthal.
367	06/29/2005	357	Transcript of Trial (Volume XII) held on April 12, 2005 before the Honorable Joel B. Rosenthal.
368	06/29/2005	358	Transcript of Trial (Volume XIII) held on April 13, 2005 before the Honorable Joel B. Rosenthal.
369	06/29/2005	359	Transcript of Trial (Volume XIV) held on April 14, 2005 before the Honorable Joel B. Rosenthal.
370	06/29/2005	360	Transcript of Trial (Volume XV) held on April 15, 2005 before the Honorable Joel B. Rosenthal.
371	06/29/2005	361	Transcript of Trial (Volume XVI) held on May 2, 2005 before the Honorable Joel B. Rosenthal.
372	06/29/2005	362	Transcript of Trial (Volume XVII) held on May 3, 2005 before the Honorable Joel B. Rosenthal.
373	06/29/2005	363	Transcript of Trial (Volume XVIII) held on May 4, 2005 before the Honorable Joel B. Rosenthal.
374	06/29/2005	364	Transcript of Trial (Volume XIX) held on May 5, 2005 before the Honorable Joel B. Rosenthal.
375	06/29/2005	365	Transcript of Trial (Volume XX) held on May 10, 2005 before the Honorable Joel B. Rosenthal.
376	06/29/2005	366	Transcript of Trial (Volume XXI) held on May 11, 2005 before the Honorable Joel B. Rosenthal.
377	06/29/2005	367	Transcript of Trial (Volume XXII) held on June 13, 2005 before the Honorable Joel B. Rosenthal.

Proofs of Claim

Tab	Date	Claim No.	Description of Item
378	10/15/2001	2012	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Communications, Inc. Case No. 01-01430
379	10/15/2001	2013	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WCI Capital Corp. Case No. 01-01431
380	10/15/2001	2014	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Equipment Corp. Case No. 01-01432
381	10/15/2001	2015	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Wireless, Inc., Case No. 01-01443
382	10/15/2001	2016	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Network Expansion, LLC. Case No. 01-01446
383	10/15/2001	2017	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WVF-1 LLC Case No. 01-01452
384	10/15/2001	2018	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WVF-LU2, LLC Case No. 01-01453
385	10/15/2001	2019	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Communications, Inc. Case No. 01-01430
386	10/15/2001	2020	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WCI Capital Corp. Case No. 01-01431

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387	10/15/2001	2021	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Equipment, Corp. Case No. 01-01432
388	10/15/2001	2022	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Wireless, Inc. Case No. 01-01442
389	10/15/2001	2023	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Network Expansion, LLC. Case No. 01-01446
390	10/15/2001	2024	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WVF-I LLC. Case No. 01-01452
391	10/15/2001	2025	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WVF-LU2 LLC Case No. 01-01453
392	10/15/2001	2026	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Communications, Inc. Case No. 01-01430
393	10/15/2001	2027	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WCI Capital Corp. Case No. 01-01431
394	10/15/2001	2028	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Equipment Corp. Case No. 01-01432
395	10/15/2001	2029	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Wireless, Inc. Case No. 01-01443
396	10/15/2001	2030	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Network Expansion, LLC. Case No. 01-01446
397	10/15/2001	2031	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WVF-I LLC. Case No. 01-01452
398	10/15/2001	2032	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WVF-LU2, LLC. Case No. 01-01453
399	10/15/2001	2214	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Network Expansion, LLC Case No. 01-01446
400	10/15/2001	2215	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WVF-I LLC Case No. 01-01452
401	10/15/2001	2216	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WVF-LU2, LLC. Case No. 01-01453
402	10/15/2001	2217	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WVF-LU2, LLC. Case No. 01-01453
403	10/15/2001	2218	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Communications, Inc. Case No. 01-01430
404	10/15/2001	2219	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WCI Capital Corp. Case No. 01-01431
405	10/15/2001	2220	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Equipment Corp. Case No. 01-01432
406	10/15/2001	2221	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Wireless, Inc. Case No. 01-01443

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

407	10/15/2001	2222	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in Winstar Network Expansion, LLC. Case No. 01-01446
408	10/15/2001	2223	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WVF-1 LLC. Case No. 01-01452
409	10/15/2001	2224	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$799,060,307.68, filed in WVF-LU2 LLC. Case No. 01-01453
410	10/15/2001	2225	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Communications, Inc. Case No. 01-01430
411	10/15/2001	2226	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in WCI Capital Corp.. Case No. 01-01431
412	10/15/2001	2227	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Equipment Corp. Case No. 01-01432
413	10/15/2001	2228	Lucent Technologies, Inc. Secured Proof of Claim in the amount of \$138,957,218.90, filed in Winstar Wireless, Inc.. Case No. 01-01443
414	10/15/2001	2229	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Equipment II Corp. Case No. 01-01433
415	10/15/2001	2230	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Credit Corp. Case No. 01-01434
416	10/15/2001	2231	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless Fiber Corp. Case No. 01-01435
417	10/15/2001	2232	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar LMDS, LLC. Case No. 01-01436
418	10/15/2001	2233	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar New Media Company, Inc. Case No. 01-01437
419	10/15/2001	2234	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in At Your Office, Inc. Case No. 01-01438
420	10/15/2001	2235	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Sportsfan Radio Network, Inc. Case No. 01-01439
421	10/15/2001	2236	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Interactive Ventures I, Inc. Case No. 01-01440
422	10/15/2001	2237	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Interactive Media Sales, Inc. Case No. 01-01441
423	10/15/2001	2238	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Office.com Inc. Case No. 01-01442
424	10/15/2001	2239	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Broadband Acquisition 2000, LLC. Case No. 01-01444
425	10/15/2001	2240	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Midcom Acquisition Corp. Case No. 01-01445

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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426	10/15/2001	2241	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in WWI License Holding, Inc. Case No. 01-01447
427	10/15/2001	2242	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Government Solutions, LLC. Case No. 01-01448
428	10/15/2001	2243	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in WVF-CSCI, LLC Case No. 01-01449
429	10/15/2001	2244	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in WVF-DL I, LLC Case No. 01-01450
430	10/15/2001	2245	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in WVF-CPQ1, LLC Case No. 01-01451
431	10/15/2001	2246	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of Delaware, LLC Case No. 01-01454
432	10/15/2001	2247	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of Georgia, LLC Case No. 01-01455
433	10/15/2001	2248	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of Indiana, LLC Case No. 01-01456
434	10/15/2001	2249	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of New Jersey, LLC Case No. 01-01457
435	10/15/2001	2250	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of New York, LLC Case No. 01-01458
436	10/15/2001	2251	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of Pennsylvania, LLC Case No. 01-01459
437	10/15/2001	2252	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of Virginia, LLC Case No. 01-01460
438	10/15/2001	2253	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar Wireless of West Virginia, LLC Case No. 01-01461
439	10/15/2001	2254	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$1,895,405,548.00, filed in Winstar International Inc. Case No. 01-01462
440	10/15/2001	2255	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Communications, Inc. Case No. 01-01430
441	10/15/2001	2256	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WCI Capital Corp. Case No. 01-01431
442	10/15/2001	2257	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Equipment Corp. Case No. 01-01432
443	10/15/2001	2258	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Wireless, Inc. Case No. 01-01443

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

444	10/15/2001	2259	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in Winstar Network Expansion, LLC. Case No. 01-01446
445	10/15/2001	2260	Lucent Technologies, Inc. Unsecured Proof of Claim in the amount of \$957,388,021.50, filed in WVF-I LLC. Case No. 01-01452
446	3/13/2003	4532	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WCI Capital Corp. Case No. 01-01431
447	3/13/2003	4533	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-I LLC Case No. 01-01452
448	3/13/2003	4534	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-I LLC Case No. 01-01452
449	3/13/2003	4535	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar Network Expansion, LLC Case No. 01-01446
450	3/13/2003	4536	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-LU2, LLC Case No. 01-01453
451	3/13/2003	4537	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar Wireless, Inc. Case No. 01-01443
452	3/13/2003	4538	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar Communications, Inc. Case No. 01-01430
453	3/13/2003	4552	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar Communications, Inc. Case No. 01-01430
454	3/13/2003	4453	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-LU2, LLC Case No. 01-01453
455	3/13/2003	4554	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar Network Expansion, LLC Case No. 01-01446
456	3/13/2003	4555	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-I LLC Case No. 01-01452
457	3/13/2003	4556	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WVF-I LLC Case No. 01-01452
458	3/13/2003	4557	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in Winstar wireless, Inc. Case No. 01-01443
459	3/13/2003	4558	Lucent Technologies, Inc. Proof of Claim in the amount of \$900,000,000.00, filed in WCI Capital Corp. Case No. 01-01431

Joint (JX) Trial Exhibits

Tab	Date	Exhibit No.	Description of Item
460		JX 1	Nathan Kantor Direct and Cross Testimony from videotaped depositions played at trial
461		JX 2	Lisa Hicks Direct and Cross Testimony from videotaped depositions played at trial
462		JX 3	Bill Zlotnick Direct and Cross Testimony from videotaped depositions played at trial

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

463		JX 4	Jill Diroma Direct, Cross and Redirect Testimony from videotaped depositions played at trial
464		JX 5	Frederic E. Rubin Direct, Cross and Redirect Testimony from videotaped depositions played at trial
465		JX 6	David W. Ackerman Direct, Cross and Redirect Testimony from videotaped depositions played at trial
466		JX 7	Richard McGinn Direct, Cross and Redirect Testimony from videotaped depositions played at trial
467		JX 8	William J. Rouhana Direct and Cross Testimony from videotaped depositions played at trial
468		JX 9	Michael Montemairano Direct and Cross Testimony from videotaped depositions played at trial
469		JX 10	Deborah Hopkins Direct and Cross Testimony from videotaped depositions played at trial
470		JX 11	Gary P. Simpson Direct and Cross Testimony from videotaped depositions played at trial
471		JX 12	William Fullerton Direct and Cross Testimony from videotaped depositions played at trial
472		JX 13	Richard J. Uhl Direct and Cross Testimony from videotaped depositions played at trial
473		JX 14	Henry B. Schacht Direct and Cross Testimony from videotaped depositions played at trial
474		JX 15	Kevin Monaco Direct and Cross Testimony from videotaped depositions played at trial
475		JX 16	Gary Goldman Direct and Cross Testimony from videotaped depositions played at trial
476		JX 17	Kevin Holwell Direct and Cross Testimony from videotaped depositions played at trial
477		JX 18	William Plunket Transcript of videotaped deposition played at trial
478		JX 19	Deborah Harris Transcript of deposition, with exhibits

Defendant (DX) Trial Exhibits

Tab	Date	Exhibit No.	Description of Item
479		DX 1	Invoices
480	6/23/2000	DX 2	Notice of Request for Borrowing (Draw Request)
481	7/24/2000	DX 3	Notice of Request for Borrowing (Draw Request)
482	8/24/2000	DX 4	Notice of Request for Borrowing (Draw Request)
483	9/22/2000	DX 5	Notice of Request for Borrowing (Draw Request)
484	10/20/2000	DX 6	Notice of Request for Borrowing (Draw Request)
485	11/30/2000	DX 7	Notice of Request for Borrowing (Draw Request)
486	12/22/2000	DX 8	Notice of Request for Borrowing (Draw Request)
487	12/29/2000	DX 9	Notice of Request for Borrowing (Draw Request)
488	1/26/2001	DX 10	Notice of Request for Borrowing (Draw Request)
489	2/23/2001	DX 11	Notice of Request for Borrowing (Draw Request)
490	6/25/1999	DX 12	DELETED
491	6/30/1999	DX 13	DELETED
492	3/20/2000	DX 14	ESP Contract Revenue Backlog

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

493	6/30/2000	DX 15	DELETED
494	7/6/2000	DX 16	DELETED
495	8/29/2000	DX 17	DELETED
496	9/30/1999	DX 18	DELETED
497	10/18/2000	DX 19	DELETED
498	10/31/2000	DX 20	DELETED
499	11/2/2000	DX 21	Letter to R. McGuire RE: Vocall
500	12/4/2000	DX 22	DELETED
501	12/21/2001	DX 23	DELETED
502	12/21/2000	DX 24	DELETED
503	12/21/2000	DX 25	DELETED
504	1/9/2001	DX 26	Relationship Overview
505	1/18/2001	DX 27	DELETED
506	10/21/1998	DX 28	Supply Agreement By and Between Winstar Communications, Inc. and Lucent Technologies Inc.
507	5/4/2000	DX 29	Credit Agreement
508	6/23/2000	DX 30	Credit Agreement
509	8/1/1999	DX 31	Master Service Agreement Between Lucent Technologies, Inc. and Winstar Wireless, Inc.
510	5/9/2000	DX 32	Security Agreement
511	12/22/2000	DX 33	Security Agreement
512	6/20/2000	DX 34	Borrowing Request
513	5/4/2000	DX 35	Credit Agreement
514	12/22/2000	DX 36	Cash Account Security Agreement
515	5/23/2000	DX 37	Equipment User Agreement
516	5/9/2000	DX 38	DELETED
517	6/23/2000	DX 39	B. Nedzi Letter RE: Investment Intermediary Acknowledgment
518	6/23/2000	DX 40	B. Nedzi Letter RE: Disbursing Bank Acknowledgment
519	12/22/2000	DX 41	B. Nedzi Letter RE: Investment Intermediary Acknowledgment
520	12/22/2000	DX 42	B. Nedzi Letter RE: Disbursing Bank Acknowledgment
521	5/9/2000	DX 43	Pledge Agreement
522	10/15/2001	DX 44	Secured Proof of Claim - United States Bankruptcy Court District of Delaware - \$138,957,218.90
523	10/15/2001	DX 45	Unsecured Proof of Claim - United States Bankruptcy Court District of Delaware - \$259,648.81
524	10/15/2001	DX 46	Secured Proof of Claim - United States Bankruptcy Court District of Delaware - \$799,060,307.68
525	3/31/2003	DX 47	Proof of Claim - United States Bankruptcy Court District of Delaware - \$900,000,000.00
526	1/26/2001	DX 48	Notice of Request for Borrowing (Draw Request)
527	1/29/2001	DX 49	M. Montemarano e-mail to P. Derrick, G. Caviness, D. Hopkins, et al re: Winstar drawdown request.
528	2/23/2001	DX 50	Notice of Request for Borrowing (Draw Request).
529	3/30/2001	DX 51	G. Goldman e-mail to G. Manloney, R. Uhl, K. Monaco, et al re: Credit Agreement.
530	4/12/2001	DX 52	G. Goldman e-mail to R. Uhl re: Credit Agreement.
531	3/26/2001	DX 53	Notes to Consolidated Financial Statements
532	10/4/2000	DX 54	F. Rubin e-mail to R. Uhl re: Capital Spend- 2000 and 2001.
533	12/11/2000	DX 55	D. Ackerman e-mail to J. Verding re: EO3Q Deal and Follow-ups.
534	12/10/2000	DX 56	B. Zlotnick e-mail to F. Rubin re: Capex.
535	12/21/2000	DX 57	D. Ackerman e-mail to B. Zlotnick re: Cap Ex.
536	12/29/2000	DX 58	D. Ackerman e-mail to F. Jules, R. Uhl and N. Kantor re: 2000 Capex.
537	1/9/2001	DX 59	G. Simpson e-mail to B. Zlotnick re: Lucent Optronics.

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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538	1/16/2001	DX 60	G. Simpson e-mail to B. Zlotnick, F. Rubin, D. Huber and D. Ackerman re: Data Circuits.
539	1/18/2001	DX 61	F. Jules e-mail to R. Uhl re Data Circuits.
540	3/23/2001	DX 62	P. Cummings e-mail to G. Goldman re: Q4 2000 Financial Covenant.
541	3/30/2001	DX 63	DELETED
542	4/9/2001	DX 64	P. Cummings and C. Craig memo to R. Bambach and G. Maloney re: Annual Audit - Significant Open Items.
543	4/12/2001	DX 65	G. Illiano e-mail to G. Goldman, J. Desmond, M. Cooperman and P. Cummings re: Dow Jones Newswire - In the Money, A D-Day of Sorts Approaches Winstar.
544	2/13/2001	DX 66	P. Cummings memo to the files re: Meeting with Client Representatives to Discuss Issues Identified to Date.
545	2/14/2001	DX 67	DELETED
546	2/15/2001	DX 68	Audit as of and for the Year Ended December 31, 2000 - Agenda for Discussion with Bill Rouhana.
547	2/26/2001	DX 69	P. Cummings e-mail to G. Goldman re: Debt Covenant Compliance.
548	10/9/2000	DX 70	S. Clement e-mail to D. Ackerman re: Action Items to Manage 200 Capital Spend.
549	10/12/2000	DX 71	D. Ackerman e-mail to F. Jules, R. Uhl and N. Kantor re: Change in Plan on 2000 CapEx Budget.
550	3/30/2004	DX 72A	Salomon Report
551		DX 73	D. Harris letter to R. Uhl re: finance organization
552		DX 74	Key Agreements reached/equipment (Presentation)
553		DX 75	IRS Revenue Ruling 59-60 (Collins Report document)
554		DX 76	DELETED
555		DX 77	2Q Lucent (spread sheet)
556		DX 78	L. Rogers E-mail to J. Orlando, W. Viqueira, N. Aversano, J. Cocito RE: WinStar
557		DX 79	Memo- Winstar/Lucent Optical Network Long Haul Program Executive Summary
558		DX 80	Executive Summary
559		DX 81	Winstar Refinance Notice Chart
560		DX 82	Hub and B-site pricing element of the 9/2000 end of quarter deal
561		DX 83	Fiscal Q3 2000 EOQ Deal
562		DX 84	Lucent/Winstar End of Quarter Deals Fiscal Year 2000.
563		DX 85	lucent project list (spread sheet)
564	1/26/1998	DX 86	Lucent Technologies delivers record-breaking optical networking capacity; five times greater than current systems AT&T is first customer to deploy
565	10/2/1998	DX 87	winstar/lucent partnership concept
566	10/3/1998	DX 88	N. Kantor E-Mail to N. Aversano RE: Winstar Partnership Concept
567	10/6/1998	DX 89	W. Rouhana E-mail to N. Kantor RE: Lucent ideas
568	10/2/1998	DX 90	Winstar/Lucent Partnership Concept
569	10/13/1998	DX 91	D. Miller Memo to J. Vardell, A. Norris, L. Rogers, P. Hayes, M. Keefe RE: Credit Agreement
570	10/19/1998	DX 92	Memo re: October 21, 1998 board meeting
571	10/19/1998	DX 93	N. Aversano and M. Walsh letter to R. McGinn re: proposed winstar Agreement
572	10/19/1998	DX 94	W. Rouhana E-Mail to N. Kantor, W. Rouhana, G. Holmes, C. Dickson RE: Updated Materials
573	10/21/1998	DX 95	Minutes of a Special Meeting of the Board of Directors of Winstar Communications, Inc.
574	4/22/2000	DX 96	Credit Agreement
575	10/22/1998	DX 97	C. Holmes Transcript to D. Briggs re: Daniel Briggs
576	11/17/1998	DX 98	C. Dickson e-mail to N. Kantor; B. Rouhana; T. Graham re: Lucent Conference Call-November 16, 1998

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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577	11/20/1998	DX 99	R. Haffar E-Mail to C. Bohlin RE: Network Engineering/Traffic Engineering Transition Plan
578	11/24/1998	DX 100	notice for request for borrowing (Draw Request)
579	12/3/1998	DX 101	J. Dwyer E-Mail to C. Dickson RE: Lucent Accounting Treatment
580	12/3/1998	DX 102	D. Ackerman E-Mail to R. Haffar, C. Dickson, T. Graham, F. Rubin, J. Dwyer, R. Schorr, N. Kantor, T. Voreas, S. Whitney RE: Lucent Discussion
581	12/5/1998	DX 103	W. Rouhana e-mail to N. Kantor re: Lucent
582	12/14/1998	DX 104	R. Haffar e-mail to C. Bohlin re: lucent architecture teams
583	12/14/1998	DX 105	Transition Plan for Lucent Resource Integration
584	12/21/1998	DX 106	DELETED
585	12/23/1998	DX 107	notice of request for borrowing (Draw Request)
586	12/23/1998	DX 108	Staff Meeting Notes and Presentation
587	12/24/1998	DX 109	A. Zendle E-Mail to R. Lewine, J. Gregg RE: Lucent Transition Planning
588	12/24/1998	DX 110	A. Zendle E-Mail with Attachment to R. Lewine, J. Gregg RE: Lucent Transition Planning
589	12/29/1998	DX 111	N. Aversano e-mail to N. Kantor re: Winstar/Lucent Opportunity Assessment.
590	12/23/1998	DX 112	notice of request for borrowing (Draw Request)
591	12/31/1998	DX 113	R. Lewine e-mail to azendle@winstar.com re: transition plan for Lucent resource integration
592	12/31/1998	DX 114	R. Lewine e-mail to J. Burton forwarding Transition Plan for Lucent Resource Integration
593	12/31/1998	DX 115	Transition Plan for Lucent Resource Integration
594	12/31/1998	DX 116	Winstar Form 10-K
595	1/4/1999	DX 117	M. Wilson letter to R. Haffar re: Agreement for network build-out services
596	1/4/1999	DX 118	M. Wilson Letter to R. Haffar RE: additional services to WinStar
597	1/4/1999	DX 119	azendle@winstar.com e-mail to rhaffar@mail.winstar.com re: transition plan for lucent resource integration.
598	1/5/1999	DX 120	DELETED
599	1/14/1999	DX 121	B. Lewine e-mail to A. Zendle re: transition plan for Lucent resource integration
600	1/19/1999	DX 122	Partnership to build winstar's 1999 network (Presentation)
601	1/20/1999	DX 123	R. Haffar E-Mail to A. Zendle RE: Lucent Transition Plan
602	1/27/1999	DX 124	Partnering to Build Winstar's 1999 Network - Follow-up Discussion - Winstar Network Services - January 27, 1999
603	1/28/1999	DX 125	J. Dwyer E-Mail to B. Rouhana, N. Kantor, C. Dickson RE: Lucent Accounting - Good News!
604	2/2/1999	DX 126	Proposed Winstar Architecture - Content Breakdown of 1999 Build Budget
605	2/19/1999	DX 127	Notice of Request for Borrowing (Draw Request)
606	3/1/1999	DX 128	C. Bohlin E-Mail to K. Earle, J. Dwyer RE: Lucent 4Q98 Teleconference
607	3/2/1999	DX 129	Proposed Winstar Architecture- Content Breakdown of 1999 Build Budget (spread sheet)
608	3/5/1999	DX 130	C. Naylor E-Mail to L. Rogers RE: WinStar documents
609	3/9/1999	DX 131	R. Haffar E-Mail to N. Kantor RE: Update Re Your meeting with Nina
610	3/9/1999	DX 132	ATM Pricing and Discount Terms for WinStar Communications, Inc.
611	3/22/1999	DX 133	Notice of Request for Borrowing (Draw Request)
612	3/23/1999	DX 134	R. Haffar E-mail to F. Rubin, J. Dwyer, R. Schorr RE: Update on Financing issues
613	3/25/1999	DX 135	B. McGuire E-Mail to N. Kantor RE: project 100 status
614	3/26/1999	DX 136	R. Haffar E-mail to F. Rubin RE: WinStar Pass Throughs-1st Draft
615	3/26/1999	DX 137	P. Hayes e-mail to C. Naylor re: Winstar
616	3/27/1999	DX 138	R. Haffar E-Mail to N. Kantor RE: Lucent Update, No Action Necessary
617	3/29/1999	DX 139	R. Haffar Letter to M. Wilson RE: products and services
618	3/29/1999	DX 140	R. Haffar Letter to M. Wilson RE: Supply Agreement
619	3/29/1999	DX 141	R. Haffar e-mail to L. Hicks re: Lucent issues.
620	3/30/1999	DX 142	M. Wilson letter to R. Haffar re: supply Agreement

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

621	3/31/1999	DX 143	M. Wilson letter to R. Haffar re: Agreement for network build-out
622	3/31/1999	DX 144	D. Ackerman e-mail to J. Everding re: Lucent PO
623	3/31/1999	DX 145	addendum to the supply Agreement between winstar and lucent
624	3/31/1999	DX 146	M. Wilson e-mail to R. Haffar re: Agreement for Network Build-out
625	4/1/1999	DX 147	R. Haffar E-Mail to N. Kantor, N. Aversano, W. Plunkett RE: Thanks
626	4/5/1999	DX 148	C. Dickson E-Mail to F. Rubin RE: Lucent PO
627	4/9/1999	DX 149	C. Dickson E-Mail to N. Kantor RE: LU Financing Issues with New PO
628	4/29/1999	DX 150	notice of request for borrowing (Draw Request)
629	5/11/1999	DX 151	Winstar Credit Agreement
630	6/1/1999	DX 152	amendment to the supply Agreement by and between winstar communications and lucent
631	4/29/1999	DX 153	notice of request for borrowing (Draw Request)
632	6/4/1999	DX 154	J. Dwyer E-mail to R. Haffar RE: Lucent Subcontracting Notice
633	6/8/1999	DX 155	L. Rogers E-mail to F. Rubin RE: Escalation to Nina re WinStar Services Pass-Through
634	6/21/1999	DX 156	F. Rubin e-mail to D. Nidowicz re: Lucent payments.
635	6/24/1999	DX 157	J. Davidson E-Mail to J. Diroma RE: Winstar Services
636	6/25/1999	DX 158	W. Carapezzi e-mail to L. Rogers re Winstar Update/Rouhana-McGinni Telephone Call
637	6/28/1999	DX 159	DELETED
638	6/23/1999	DX 160	notice of request for borrowing (Draw Request)
639	6/29/1999	DX 161	notice of request for borrowing (Draw Request)
640	7/7/1999	DX 162	R. Haffar E-Mail to N. Kantor RE: Follow-Up to Saturday's call
641	7/14/1999	DX 163	N. Kantor e-mail to cdickson@winstar.com; F. Rubin; J. Dwyer re: responses to your request.
642	7/26/1999	DX 164	Summary of Lucent Meeting
643	7/27/1999	DX 165	Organizing for Success: Executive Review
644	8/3/1999	DX 166	Winstar/Lucent turn-key process meeting
645	7/22/1999	DX 167	Notice of Request for Borrowing (Draw Request)
646	8/5/1999	DX 168	M. Wilson e-mail to jdwyer@winstar.com; frubin@winstar.com etc re: Turnkey order approach.
647	8/23/1997	DX 169	H. Shartel E-mail to C. Dickson RE: Lucent/B-Site Cab's
648	8/24/1999	DX 170	K. Castellon e-mail to T. O'Hara re: turnkey business model
649	8/24/1999	DX 171	Notice of Request for Borrowing (Draw Request)
650	9/8/1999	DX 172	J. Kim E-Mail to Winstar Employees RE: Executive Memo WNS Organization
651	9/14/1999	DX 173	D. Ackerman e-mail to N. Kantor re: apologies
652	9/18/1999	DX 174	B. Zlotnick e-mail to D. Ackerman re: critical path items - require immediate action
653	9/21/1999	DX 175	Statement and Invoice totalling \$37,075,925.
654	9/22/1999	DX 176	B. Zlotnick E-mail to N. Kantor RE: Williams 9/30 Date
655	9/22/1999	DX 177	Notice of Request for Borrowing (Draw Request)
656	9/24/1999	DX 178	S. Lidd e-mail to J. Dwyer re: Lucent and Williams flow.
657	9/26/1999	DX 179	J. Dwyer E-mail to S. Lidd, J. Dwyer, M. Viscio RE: Lucent and Williams flow
658	9/29/1999	DX 180	L. Rogers E-mail to F. Rubin RE: Availability under Lucent commitment
659	8/24/1999	DX 181	Notice of Request for Borrowing (Draw Request)
660	10/12/1999	DX 182	D. Ackerman E-Mail to D. Huber RE: Winstar NMS Hardware Platform Quotes
661	11/3/1999	DX 183	D. Ackerman E-mail to A. Zendie RE: more thoughts about cisco
662	11/16/1999	DX 184	D. Christian E-Mail to S. Lidd, F. Rubin RE: wire status
663	11/19/1999	DX 185	C. Naylor Letter to D. Ackerman RE: turnkey deliverables
664	11/22/1999	DX 186	N. Kantor E-mail to F. Rubin RE: LU Assistance
665	11/22/1999	DX 187	D. Digirolomo e-mail to F. Manzi re: winstar yr. 2000 spend meeting
666	11/23/1999	DX 188	Notice of Request for Borrowing (Draw Request)
667	11/30/1999	DX 189	Notice of Request for Borrowing (Draw Request)

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

668	11/30/1999	DX 190	M Dowdy e-mail to M Epstein; T. O'Hara; K. Black re: transition plan for lucent resource integration
669	12/6/1999	DX 191	C. Czerner e-mail to D. Ackerman re: Williams Discussions
670	12/3/1999	DX 192	Notice of Request for Borrowing (Draw Request)
671	12/7/1999	DX 193	C. Naylor e-mail to M Hill, T Crocco, B. Zlotnick, D. Huber, et al. re: Turnkey meeting on 12/09/99.
672	12/13/1999	DX 194	Amendment No. 7 to the Credit Agreement
673	12/14/1999	DX 195	B. Genner e-mail to L. Hicks re: Turnkey update w/o 12/06/99.
674	12/15/1999	DX 196	E-mail message re: Executive Memo and Press Release - Winstar Enters into \$900 Million Investment Agreement with Microsoft and Leading Investment Firms, Microsoft and Winstar Announce Agreement to Deliver Broadband Applications.
675	12/15/1999	DX 197	E-mail message re: Press Release - Winstar enters into \$900 Million Investment Agreement with Microsoft and Leading Investment Firms.
676	12/17/1999	DX 198	L. Hicks e-mail to V. Petrini re: 4Q 99 request
677	12/17/1999	DX 199	S. Howard e-mail to E. Baggerly re: 3rd party orders-Lucent
678	12/17/1999	DX 200	D. Ackerman e-mail to M. Wilson re: phone system for ICI will not be deployed by Lucent
679	12/17/1999	DX 201	M. Wilson e-mail to D. Ackerman re: phone system for ICI will not be deployed by Lucent
680	12/25/1999	DX 202	N. Kantor e-mail to N. Aversano re: incremental order
681	12/27/1999	DX 203	Notice of Request for Borrowing (Draw Request)
682	12/27/1999	DX 204	Notice of Request for Borrowing (Draw Request)
683	12/27/1999	DX 205	Notice of Request for Borrowing (Draw Request)
684	12/29/1999	DX 206	J. Mameli E-Mail to T. O'Hara RE: Agreement Required to support the Winstar Proposal
685	12/29/1999	DX 207	D. Ackerman E-Mail to R. Uhl RE: Credit
686	12/29/1999	DX 208	J. Dwyer E-mail to M. Wilson, J. Dwyer, D. Ackerman
687	12/30/1999	DX 209	A. Zendle Letter to C. Naylor RE: shipment of Optical networking equipment
688	12/30/1999	DX 210	M. Wilson letter to D. Ackerman re: Network costs
689	12/31/1999	DX 211	Winstar Form 10-K
690	1/4/2000	DX 212	A. Carrone e-mail to M. Lester; A. Jerden; R. Lepore etc. re: winstar
691	1/6/2000	DX 213	Lucent Technologies comments on expectations for first fiscal quarter 2000 earnings
692	1/18/2000	DX 214	C. Naylor E-Mail to M. Wilson, M. Epstein, M. Dowdy, J. Quinn, A. Jerden, A. Carrone, J. Diroma RE: Winstar Services
693	1/18/2000	DX 215	J. Diroma e-mail to C. Naylor; M. Wilson; M. Epstein etc.. re: winstar service
694	1/21/2000	DX 216	J. Diroma e-mail to M. Deady re: Winstar Budget
695	1/24/2000	DX 217	Notice of Request for Borrowing (Draw Request)
696	1/24/2000	DX 218	J. Gregg e-mail to J. Gregg; R. Kipke and B. Zlotnick re: problems with LH milestones PDF file
697	1/26/2001	DX 219	Notice of Request for Borrowing (Draw Request)
698	2/6/2000	DX 220	J. Noda E-Mail to S. Cassidy, F. Manzi RE: WinStar 4Q99 Funds Transfer PO
699	2/7/2000	DX 221	J. Cocito E-Mail to F. Manzi RE: Winstar Services Deal
700	2/8/2000	DX 222	D. Ackerman E-mail to A. Zendle RE: Lucent
701	2/9/2000	DX 223	J. Diroma E-Mail to M. Wilson, M. Epstein, M. Dowdy, J. Quinn, A. Jerden, A. Carrone, C. Naylor RE: Winstar Services
702	2/11/2000	DX 224	S. Colross e-mail to L. Rogers and W. Quinn re: winstar and my career limiting move
703	2/14/2000	DX 225	C. Naylor e-mail to J. Diroma, J. Cocito and D. Rigotti re: update 2FW. winstar services
704	2/17/2000	DX 226	J. Dwyer e-mail to R. Uhl and F. Rubin re: lucent
705	12/1/1998	DX 227	First amendment to the supply Agreement by and between winstar communications and lucent

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

706	3/1/2000	DX 228	DELETED
707	2/28/2000	DX 229	DELETED
708	2/22/2000	DX 230	Notice of Request for Borrowing (Draw Request)
709	3/2/2000	DX 231	V. Campbell E-mail to L. Hicks RE: Meeting 3/6, 3PM-4PM, re End-of-Qtr Reciprocal Deal
710	3/2/2000	DX 232	B. Zlotinichk e-mail to D. Ackerman re: Williams fiber
711	3/3/2000	DX 233	J. Bryce e-mail to A. Zendle re: history made at today at Winstar.
712	3/8/2000	DX 234	A. Zendle e-mail to L. Hicks re: D. Ackerman's 03/07/00 meeting with Lucent.
713			INTENTIONALLY LEFT BLANK
714	3/8/2000	DX 235	A. Zendle E-Mail to L. Hicks RE: Lucent
715	3/9/2000	DX 236	F. Rubin Fax to M. Keefe RE: Latest Lucent term sheet draft of 3/7/00
716	3/9/2000	DX 237	J. Dwyer E-Mail to N. Kantor RE: Lucent Subcontracting
717	3/10/2000	DX 238	J. Dwyer E-Mail to G. Simpson re: Lucent PO
718	3/13/2000	DX 239	D. Nidowicz E-Mail to D. Christian RE: Winstar Services
719	3/13/2000	DX 240	B. Pakenham E-Mail to D. Christian RE: Winstar
720	3/14/2000	DX 241	R. Uhl e-mail to F. Rubin re: Lucent Term Sheet Update.
721	3/15/2000	DX 242	G. Simpson e-mail to J. Dwyer re: Q1 2000 Lucent PO Estimate.
722	3/17/2000	DX 243	D. Danielsens e-mail to L. Hicks re: DWDM Maintenance Routes.
723	3/20/2000	DX 244	J. Lusk Letter to F. Rubin RE: Vendor Financing Commitment
724	3/20/2000	DX 245	B. McGuire e-mail to J. Dwyer re: sale of license right to use.
725	3/21/2000	DX 246	B. Zlotnick Letter to A. Zendle RE: FOR YOUR DECISION
726	3/22/2000	DX 247	D. Ackerman E-mail to A. Zendle
727	3/22/2000	DX 248	D. Ackerman e-mail to N. Kantor re: Meeting with Mark Wilson.
728	3/24/2000	DX 249	N. Aversano e-mail to N. Kantor re: Agreements
729	3/28/2000	DX 250	Purchase Order
730	3/28/2000	DX 251	D. Ackerman E-Mail to A. Zendle RE: Additional Services Addendum
731	3/28/2000	DX 252	M. Wilson E-Mail to D. Ackerman RE: Follow up to yesterday's discussion
732	3/28/2000	DX 253	S. Dodd e-mail to L. Hicks re: ASM quote.
733	3/29/2000	DX 254	R. Bambach E-Mail to S. Lidd RE: wamnet warehouse
734	3/29/2000	DX 255	M. Wilson Letter to D. Ackerman RE: timeline
735	3/29/2000	DX 256	M. Keefe e-mail to K. Zinghini re: requested waivers
736	3/29/2000	DX 257	D. Ackerman email to C. Naylor re Features Deliverables - Penalties
737	3/30/2000	DX 258	J. Dwyer E-Mail to M. Wilson RE: Credit
738	3/30/2000	DX 259	L. Grayson E-mail to A. Zendle RE: Updated Contractual Documentation
739	3/30/2000	DX 260	F. Manzi e-mail to M. Wilson re: resale of winstar asset purchase.
740	3/31/2000	DX 261	M. Wilson Fax to D. Ackerman RE: additional \$3,000,000 in network costs
741	3/27/2000	DX 262	Notice of Request for Borrowing (Draw Request)
742	3/29/2000	DX 263	Notice of Request for Borrowing (Draw Request)
743	3/31/2000	DX 264	C. Naylor E-mail to J. Vickers, K. Richardson RE: Winstar Credit Letter
744	3/31/2000	DX 265	A. Zendle Letter to C. Naylor RE: Optical Network delivery
745	3/31/2000	DX 266	C. Naylor E-Mail to L. Hicks RE: incremental costs for lack of end-to-end provisioning
746	3/31/2000	DX 267	A. Fulton e-mail to C. Levasseur, R. Conway, F. Robeson, C. Williams, et al re: 2Q00 upgrade revenue from Winstar.
747	3/31/2000	DX 268	M. Wilson letter to D. Ackerman re: networks costs
748	3/31/2000	DX 269	L. Zapico e-mail to J. Diroma re: approvals needed on another POA for a second winstar funds transfer for this 1000.
749	3/31/2000	DX 270	Winstar Form 10-Q
750	4/3/2000	DX 271	R. Lewine E-Mail to B. Zlotnick RE: George's Reply
751	4/5/2000	DX 272	E-Mail with Attachment to N. Holcomb RE: Siemens Accelerated Proposal
752	4/6/2000	DX 273	W. Fullerton e-mail to J. Diroma re: resale of winstar asset purchase
753	4/6/2000	DX 274	J. Quinn e-mail to J. Diroma re: rationale for lucent/winstar quarterly funds transfers for network buildout services
754	4/11/2000	DX 275	D. Ackerman e-mail to A. Zendle re: Siemens Accelerated Proposal

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

755	4/14/2000	DX 276	F. Rubin E-mail to K. Zinghini, D. Nidowicz RE: Lucent
756	3/29/2000	DX 277	Notice of Request for Borrowing (Draw Request)
757	4/27/2000	DX 278	S. Colross e-mail to J. Cocito re: winstar
758	4/27/2000	DX 279	Audix Message from J. Cocito to N. Aversano re: financing stumbling block.
759	5/2/2000	DX 280	L. Hicks E-Mail to F. Rubin RE: Siemens meeting/questions
760	5/2/2000	DX 281	K. Monaco E-Mail to S. Colross
761	5/2/2000	DX 282	B. Perricone and J. Kersten memo to P. Sperling, J. Orlando and B. Viqueira re: Winstar Communication
762	5/2/2000	DX 283	Winstar Outstanding New Facility WVF-1
763	5/4/2000	DX 284	revolving credit and term loan Agreement
764	5/4/2000	DX 285	Winstar-WVF-1
765	5/9/2000	DX 286	F. Rubin letter to E. Perricone re: thank you note for help on transaction.
766	5/12/2000	DX 287	L. Grayson E-mail to A. Zandie RE: Siemens Update
767	5/15/2000	DX 288	N. Kantor E-mail to D. Ackerman RE: Siemens
768	5/15/2000	DX 289	B. Rouhana and N. Kantor E-mail to Winstar Employees RE: Executive Memo Winstar Completes Strategic Refinancing
769	5/16/2000	DX 290	K. Monaco E-Mail to R. Uhl RE: Cisco & Siemens - Financing Update
770	5/17/2000	DX 291	M. Burke letter to N. Aversano re: Friday gap closure call
771	5/17/2000	DX 292	L. Rogers e-mail to S. Colross re: Winstar Financing Facility.
772	5/18/2000	DX 293	K. Monaco E-mail to S. Kasera RE: Side Letter Agreement to our Supply Agreement
773	5/22/2000	DX 294	S. Kasera E-mail to F. Boyer RE: Financing Structure
774	5/23/2000	DX 295	L. Rogers e-mail to V. Petrini, D. Forrester, M. Epstein, T. O'Hara, et al re: Winstar Financing - Update.
775	5/23/2000	DX 296	Perfection Certificate
776	5/24/2000	DX 297	M. Deady e-mail to J. Diroma re Winstar Financing update.
777	5/30/2000	DX 298	D. Ackerman E-Mail to R. Uhl, N. Kantor RE: Operational Strategy
778	6/1/2000	DX 299	L. Rogers e-mail to D. Hopkins attaching 05/31/00 Winstar briefing memorandum.
779	6/1/2000	DX 300	A. Alfred e-mail to L. Rogers and E. Perricone re: Winstar Summary.xls
780	6/12/2000	DX 301	D. Danielson e-mail to L. Hicks re: heads-up EOQ items
781	6/13/2000	DX 302	E. Perricone E-mail to L. Rogers, W. Viqueira, J. Cocito RE: WVF I LLC-First Draw Down Request
782	6/14/2000	DX 303	K. Monaco E-Mail to F. Rubin RE: LU Update
783	6/14/2000	DX 304	D. Ackerman e-mail to L. Hicks re: Turnkey Hub/B Cost Reduction.
784	6/14/2000	DX 305	J. Dwyer E-Mail to F. Rubin RE: Checks
785	6/17/2000	DX 306	R. Lewine e-mail to D. Rigotti; W. Plunkett; V. Petrini ect Re: winstar hubs and bs pricing with some clarifications.
786	6/19/2000	DX 307	K. Castellon e-mail to M. Wilson; K. O'Grady; W. Plunkett; F. Manzi re: Remember the IRU's
787	6/22/2000	DX 308	L. Hicks e-mail to B. Genner; G. Thomas re: jeopardy on stingers for converged access network
788	6/23/2000	DX 309	Notice of Request for Borrowing (Draw Request)
789	6/23/2000	DX 310	F. Rubin e-mail to E. Perricone, L. Rogers and S. Colross re: Sale of Lucent's Winstar Paper.
790	6/23/2000	DX 311	D. Ackerman e-mail to N. Kantor re: Lucent money
791	6/23/2000	DX 312	C. Naylor e-mail to D. Harris re: b-site pricing for winstar
792	6/23/2000	DX 313	arks - Lucent e-mail to W. Plunkett re: A-1 winstar EOQ deal
793	6/23/2000	DX 314	C. Naylor e-mail to W. Plunkett and R. Helfrich re: A-1 Winstar EOQ Deal.
794	6/23/2000	DX 315	D. Danielsen e-mail to L. Hicks re: SNC/SNMS Exper User/Operations Services SOW
795	6/23/2000	DX 316	N. Kantor e-mail to D. Ackerman re: VoDSL Media Report
796	6/26/2000	DX 317	D. Ackerman e-mail to N. Kantor re: end of quarter deals with lucent and winstar

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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797	6/26/2000	DX 318	T. Feil e-mail to V. Heron, N. Aversano, et al. re: Material lists to support ONG end of quarter deal for Winstar.
798	6/26/2000	DX 319	G. Hogue e-mail to L. Hicks re: SNC/SNMS Exper User/Operations Services SOW
799	6/26/2000	DX 320	Winstar Form S-3
800	6/27/2000	DX 321	F. Rubin E-Mail to J. Dwyer, R. Uhl RE: Lucent Services PO
801	6/28/2000	DX 322	M. Wilson Letter to D. Ackerman RE: additional \$14,000,000 in network operating costs
802	6/28/2000	DX 323	F. Rubin e-mail to R. Uhl re: Lucent EOQ PO's.
803	6/28/2000	DX 324	L. Hicks e-mail to D. Ackerman re: EOQ Deals
804	6/30/2000	DX 325	Winstar Form 10-Q
805	6/30/2000	DX 326	B. Plunkett Letter to D. Ackerman RE: 14,000,000 credit
806	10/28/1998	DX 327	supplemental software Agreement between winstar and lucent
807	6/29/2000	DX 328	T. Feil e-mail to L. Hicks re: Product changes to Morrow inventory of wavestar 400G equipment
808	6/30/2000	DX 329	B. Plunkett letter to D. Ackerman re: Lucent provision of \$14,000,000 credit to Winstar.
809	6/30/2000	DX 330	J. Dwyer e-mail to R. Uhl and F. Rubin re: PO for Lucent services.
810	6/30/2000	DX 331	D. Rigotti e-mail to S. Linnell re: Revised 2Q00 deal.
811	6/30/2000	DX 332	D. Ackerman e-mail to L. Hicks re: software pool Agreement
812	6/30/2000	DX 333	V. Petrini E-mail to A. Fulton, W. Plunkett, W. Montgomery, etc RE: SOFTWARE POOL Agreement
813	6/30/2000	DX 334	L. Hicks Letter to V. Petrini re: optical networking equipment
814	6/30/2000	DX 335	R. Uhl E-Mail to F. Rubin RE: Lucent EOQ PO's
815	7/4/2000	DX 336	N. Kantor e-mail to D. Ackerman re: winstar-cisco executive meeting update.
816	6/30/2000	DX 337	B. Plunkett Letter to D. Ackerman RE: additional \$14,000,000 in network operating costs
817	7/5/2000	DX 338	D. Rigotti E-Mail to C. Naylor, D. Harris, W. Plunkett, W. Montgomery RE: Hyb & B Pricing
818	7/6/2000	DX 339	K. Chawla e-mail to R. Uhl re: Siemens due diligence
819	7/6/2000	DX 340	K. Monaco e-mail to S. Kasera re: Asset valuation data for Winstar
820	7/6/2000	DX 341	K. Monaco E-mail to F. Rubin RE: Siemens due diligence
821	7/7/2000	DX 342	T. Shevock e-mail to L. Person; Y. Wilder; B. Seay ect. Re: vender relocations
822	7/9/2000	DX 343	R. Lewine E-Mail to W. Plunkett, C. Naylor, D. Harris, B. Genner, etc. RE: URGENT B-Site Pricing
823	7/24/2000	DX 344	F. Rubin E-mail to H. Shartel RE: Budget Issues
824	7/24/2000	DX 345	B. Weissenberger e-mail to L. Hicks, K. Dean, et al. re: A&E pricing.
825	7/24/2000	DX 346	J. Diroma e-mail to J. Cocito, C. Naylor, E. Perricone, L. Rogers, et al re: Winstar Services.
826	7/24/2000	DX 347	Notice of Request for Borrowing (Draw Request)
827	7/28/2000	DX 348	W. Plunkett E-Mail to J. Diroma RE: Private, Important
828	7/31/2000	DX 349	Winstar and Oracle Enter Into Strategic Partnership
829	7/31/2000	DX 350	V. Petrini E-mail to D. Huber, T. Shevock, B. Zlotnick, D. Rigotti RE: data center equipment
830	8/2/2000	DX 351	J. Stephens e-mail to Winstar re: Executive Memo and Press Release Winstar Results Up Sharply
831	8/4/2000	DX 352	Winstar Form S-4
832	8/7/2000	DX 353	L. Hicks e-mail to B. Zlotnick re weekly lucent converged architecture review meeting
833	8/15/2000	DX 354	D. Huber e-mail to D. Ackerman; L. Hicks etc. re: product changes to the ASM inventory
834	8/17/2000	DX 355	G. Garrett e-mail to N. Aversano, W. Plunkett, L. Fawcett, N. De Tura and D. Harris re: Winstar LH Jeopardy.
835	8/21/2000	DX 356	G. Simpson e-mail to R. Bambach re Nate's meeting with Lucent

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836	8/18/2000	DX 357	F. Rubin e-mail to R. Uhl re: Siemens Status
837	8/18/2000	DX 358	Winstar Major Projects/Issues Status.
838	8/21/2000	DX 359	Winstar Strategy Development and Action Planning (SDAP) Workshop
839	8/24/2000	DX 360	Notice of Request for Borrowing (Draw Request)
840	8/28/2000	DX 361	V. Petrini e-mail to K. Richardson re: action item
841	8/29/2000	DX 362	R. Helfrich E-mail to K. Hoggard, V. Petrini, J. Harris, etc. RE: Anixter 400G inventory
842	8/29/2000	DX 363	D. Ackerman E-Mail to R. Uhl RE: ONG and Hubs and B's addenda and SoWs
843	8/29/2000	DX 364	W. Fullerton e-mail to J. Diroma re: Resale of Winstar Asset Purchase.
844	8/28/2000	DX 365	Winstar Form S-3
845	8/30/2000	DX 366	L. Hicks E-Mail to D. Ackerman RE: Lucent Strategy
846	8/31/2000	DX 367	B. Zlotnick e-mail to D. Ackerman re: WLA revenue for 3Q
847	9/1/2000	DX 368	D. Hopkins e-mail to W. Viqueira and K. DaSilva re: much to do
848	9/1/2000	DX 369	S. Kaser E-mail to F. Rubin, K. Monaco RE: Financing Structure
849	9/1/2000	DX 370	D. Harris E-Mail to L. Rogers RE: Winstar Update
850	9/3/2000	DX 371	V. Petrini e-mail to L. Titteringotn re: action item
851	9/4/2000	DX 372	D. Hopkins E-Mail to L. Rogers, M. Carroll, P. Derrick, N. Aversano RE: Winstar Update
852	9/5/2000	DX 373	L. Rogers Memo to P. Derrick RE: WinStar Briefing Memo
853	9/6/2000	DX 374	J. Cocito Letter to N. Aversano RE: security investigation
854	9/6/2000	DX 375	L. Rogers e-mail to D. Hopkins, W. Viqueira, N. Aversano and P. Derrick re: Winstar Chronology.
855	9/11/2000	DX 376	V. Heron E-mail to J. Cocito, D. Harris, W. Plunkett, B. Montgomery, R. Mark RE: Winstar chronology-update
856	9/12/2000	DX 377	Minutes of a Meeting of the Board of Directors of Winstar Communications, Inc.
857	9/13/2000	DX 378	A. Masullo e-mail to W. Plunkett; D. Harris; M. Epstein etc. re: Winstar Service Call
858	9/14/2000	DX 379	S. Kaser E-mail to F. Rubin, K. Monaco RE: Indicative Term Sheet
859	9/14/2000	DX 380	J. Newsom E-Mail to D. Harris, V. Petrini RE: EOQ Deal Summary
860	9/14/2000	DX 381	Lucent/Winstar End of Quarter Deals Fiscal Year 2000
861	9/15/2000	DX 382	D. Rigotti E-Mail to G. Garrett RE: Winstar Services Position
862	9/17/2000	DX 383	D. Huber E-Mail to D. Ackerman RE: Siemens
863	9/17/2000	DX 384	G. Pettit e-mail to B. Genner and D. Parks re: Lucent Approach to Advanced IP Services Support.
864	9/17/2000	DX 385	K. O'Grady e-mail to V. Petrini, D. Harris, L. Titterington, et al. re: EOQ Latest after Sunday evening call.
865	9/18/2000	DX 386	F. Jules e-mail to N. Marino re: ATG
866	9/18/2000	DX 387	F. Jules e-mail to N. Kantor re: Florida Long Haul
867	9/19/2000	DX 388	M. Kerner e-mail to M. McFuinn, J. Diroma, N. Aversano, R. Mark, G. Garrett, F. Mazni, M. Epstein, J. Cocito RE: Materials for Winstar Call Today, 9/19/00
868	9/19/2000	DX 389	Winstar/Lucent 2000-2001 partnership deal
869	9/22/2000	DX 390	D. Harris E-Mail with Attachment to D. Ackerman, R. Uhl RE: Winstar Services Purchase Order
870	9/22/2000	DX 391	D. Harris e-mail to N. Kantor and F. Jules re: winstar services purchase order
871	9/22/2000	DX 392	W. Rouhana e-mail to N. Kantor re: groundwork for Cisco and Siemens deals.
872	9/22/2000	DX 393	A. Alfred E-mail to A. Brooks, A. Derksen, A. Fasciano, A. Jerden, etc RE: Winstar Drawdown 09/29/00
873	9/22/2000	DX 394	Notice of Request for Borrowing (Draw Request)
874	9/22/2000	DX 395	Winstar/Lucent Partnership Deal
875	9/22/2000	DX 396	D. Harris letter D. Ackerman letter re: supply Agreement
876	9/22/2000	DX 397	D. Harris letter to D. Ackerman re: supply Agreement
877	9/22/2000	DX 398	F. Manzi E-Mail to K. O'Grady RE: Update on Radios
878	9/24/2000	DX 399	N. Kantor E-Mail to N. Aversano RE: Winstar Services Purchase Order

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

879	9/25/2000	DX 400	N. Kantor E-Mail to D. Ackerman, F. Jules, R. Uhl RE: Updated Deals List
880	9/25/2000	DX 401	D. Rigotti E-mail to D. Harris RE: Winstar Services Clarification
881	9/25/2000	DX 402	J. Cocito e-mail to F. Manzi re: Winstar Services.
882	9/25/2000	DX 403	A. Alfred e-mail to V. Petrini re: winstar drawdown
883	9/25/2000	DX 404	G. Simpson e-mail to F. Rubin re: revised draw #4
884	9/25/2000	DX 405	N. Kantor e-mail to D. Ackerman re: Business Deal V2.
885	9/25/2000	DX 406	A. Dollins e-mail to D. Harris attaching chart re: Winstar Issues/Status/Solutions.
886	9/25/2000	DX 407	D. Christian E-Mail to J. Diroma RE: June Winstar billing
887	9/27/2000	DX 408	N. Aversano Letter to N. Kantor and R. Uhl RE: purchase order WVF1-0000002958
888	9/27/2000	DX 409	Hubs and B's History - Winstar
889	9/28/2000	DX 410	winstar/lucent 2000 partnership deal- decision matrix
890	9/28/2000	DX 411	D. Harris E-Mail to W. Plunkett, B. Montgomery, J. Cocito, V. Heron RE: Lucent Credit
891	9/28/2000	DX 412	G. Maloney E-Mail to N. Aversano re: Lucent Credit.
892	9/29/2000	DX 413	D. Harris Letter to D. Ackerman RE: \$10,000,000 credit
893	9/29/2000	DX 414	DELETED
894	9/29/2000	DX 415	DELETED
895	9/29/2000	DX 416	D. Harris letter to D. Ackerman re: operating costs
896	9/29/2000	DX 417	J. Bullen e-mail to V. petrini; adollins@lucent.com; dharrisbrown@lucent.com ect. Re: winstar/lucent enterprise integration lab
897	9/29/2000	DX 418	R. Uhl Memo to D. Ackerman, F. Jules, N. Kantor, G. Maloney, F. Rubin, B. Zlotnick RE: Winstar & Lucent
898	9/29/2000	DX 419	A. Fulton e-mail to J. Bullen re: A-1 S/W Services.
899	9/29/2000	DX 420	B. Zlotnick letter to V. Petrini re: bill and hold for Lucent optical equipment
900	9/29/2000	DX 421	Software Pool Agreement between Winstar and Lucent
901	9/29/2000	DX 422	Press Release - Winstar Communications
902	9/29/2000	DX 423	DELETED
903	9/29/2000	DX 424	R. Uhl Memo to D. Ackerman, F. Jules, N. Kantor, J. Maloney, F. Rubin, B. Zlotnick RE: Winstar & Lucent
904	9/29/2000	DX 425	B. Zlotnick Letter to V. Petrini RE: Bill and Hold Letter for Lucent Stinger DSLAMs and cabinets
905	9/29/2000	DX 426	W. Plunkett e-mail to V. Heron re: Lucent Credit
906	9/29/2000	DX 427	Software Pool Agreement Between Winstar Communications, Inc. and Lucent Technologies Inc. (Terrell Declaration Exhibit 1)
907	9/29/2000	DX 428	N. Aversano E-mail to D. Harris, W. Plunkett, B. Montemarano, J. Cocito RE: Lucent Credit
908	9/30/2000	DX 429	Winstar Form 10-Q (Collins Report document)
909	10/20/2000	DX 430	10 Year Equity Model (Collins Report document)
910	10/1/2000	DX 431	Statement and Invoice
911	10/2/2000	DX 432	D. Ackerman e-mail to N. Kantor re: winstar contractor services
912	10/3/2000	DX 433	N. Kantor e-mail to D. Ackerman re: Siemens Order for '00
913	10/4/2000	DX 434	V. Petrini e-mail to D. Rigotti re: hub construction cost update
914	10/5/2000	DX 435	D. Ackerman E-mail to F. Rubin RE: Lucent Contractor Services
915	10/5/2000	DX 436	W. Fullerton e-mail to D. Harris; J. Diroma; A. Carrone etc. re: Winstar IRU's
916	10/6/2000	DX 437	K. Dean E-Mail to B. Weissenberger RE: EOQ - No more hub of B-site change orders
917	10/6/2000	DX 438	W. Plunkett letter to D. Ackerman re: development of the Enterprise Integration Laboratory.
918	10/8/2000	DX 439	K. Monaco E-Mail to F. Rubin RE: Siemens Head's Up
919	10/10/2000	DX 440	D. Ackerman e-mail to R. Uhl re: Siemens
920	10/11/2000	DX 441	K. Chawla E-mail to N. Kantor RE: Winstar/Siemens
921	10/14/2000	DX 442	D. Huber E-Mail to J. Bullen RE: Lucent Outsourcing Project

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

922	10/16/2000	DX 443	B. Plunkett letter to D. Ackerman re: defer billing
923	10/18/2000	DX 444	V. Petrini e-mail to P. Perry; B. Genner ect. Re: Q1 FY2001
924	10/19/2000	DX 445	Lucent/Winstar end of quarter deal fiscal year Q42000
925	10/19/2000	DX 446	D. Nidowicz Fax to A. Alfred RE: Revised Draw Request for 10/24/00
926	10/20/2000	DX 447	F. Rubin E-Mail to N. Kantor RE: Lucent Wire on Monday
927	10/20/2000	DX 448	B. Plunkett letter to D. Ackerman re: Winstar credit for optical equipment
928	10/20/2000	DX 449	B. Plunkett letter to D. Ackerman re: pricing and commitments.
929	10/20/2000	DX 450	E. Perricone E-mail to D. Harris, N. Aversano RE: Winstar Refinance Notice
930	10/20/2000	DX 451	W Plunkett letter to D. Ackerman re: Lucent credit of \$35M to Winstar upon receipt of first order for optical equipment in CYQ42000.
931	10/23/2000	DX 452	D. Huber E-Mail to L. Hicks RE: Winstar Services Meeting on Tuesday
932	10/23/2000	DX 453	A. Alfred e-mail to A. Carrone; A. Derksen; A. Fasciano etc re: Winstar Drawdown
933	10/25/2000	DX 454	D. Huber E-mail to N. Kantor, F. Jules, D. Ackerman RE: Cisco Summary
934	10/26/2000	DX 455	B. Zlotnick E-Mail to F. Rubin RE: Lucent Meeting
935	10/26/2000	DX 456	A. Dollins e-mail with attachment to D. Harris re: winstar consumer briefing
936	10/26/2000	DX 457	F. Rubin E-Mail with Attachment to B. Rouhana, R. Uhl RE: Lucent Term Sheet
937	10/26/2000	DX 458	J. Alfasi e-mail to E. Mullan re: Exec Review 10/26
938	10/27/2000	DX 459	N. Kantor E-Mail to F. Jules, R. Uhl RE: 2000 Capex Forecast
939	10/27/2000	DX 460	DELETED
940	10/31/2000	DX 461	Credit Suisse First Boston Private Equity investment Committee Presentation.
941	11/1/2000	DX 462	L. Rogers E-mail to D. Harris RE: Winstar Schacht Presentation
942	11/1/2000	DX 463	Winstar Final
943	11/1/2000	DX 464	DELETED
944	11/1/2000	DX 465	L. Rogers e-mail to M. Hund-Mejean re: Winstar
945	11/1/2000	DX 466	Winstar Financing
946	11/1/2000	DX 467	(Presentation) Winstar Financing
947	11/1/2000	DX 468	D. Harris E-Mail to L. Rogers RE: feedback
948	11/1/2000	DX 469	D. Wu e-mail to N. Kantor re: 4Q revenue from Hong Kong
949	11/4/2000	DX 470	E. Perricone e-mail to F. Rubin, K. Monaco, R. Uhl, et al re: Winstar Due Diligence.
950	11/6/2000	DX 471	J. Ritter E-Mail with Attachment to B. Zlotnick, L. Hicks RE: Tomorrow's Presentation
951	11/6/2000	DX 472	F. Rubin letter to Siemens AG re: Winstar Communications, Inc - Term Loan C.
952	11/6/2000	DX 473	Supplemental Agreement among Winstar Communications, Inc., Siemens Carrier Networks LLC. And Siemens Aktiengesellschaft.
953	11/6/2000	DX 474	Supplemental Agreement among Winstar Communications, Inc., and Siemens
954	11/7/2000	DX 475	M. Montemarano e-mail to P. Derrick re Winstar LW100073113A-00043113A
955	11/7/2000	DX 476	Minutes of meeting of the board of directors of winstar communications
956	11/7/2000	DX 477	E. Perricone E-Mail to M. Keefe, P. Derrick, J. Diroma, etc. RE: Winstar
957	10/19/1998	DX 478	C. Dickson memorandum to W. Rouhana, N. Kantor, S. Chrast, B. Wasserman, S. Magyar, W. vanden Heuvel and J. Cash re: October 21, 1998 Board Meeting
958	11/8/2000	DX 479	J. Stephens E-Mail to Winstar Employees RE: Executive Memo & Press Releases Winstar Reports Continued Strong Results, Winstar Secures Over \$1 billion in Additional Financing Agreements
959	11/8/2000	DX 480	Press Release: "Winstar Reports Continued Strong Results"
960	11/8/2000	DX 481	F. Rubin E-mail to B. Fukuhar, D. Rogan, R. Drobny, etc RE: Winstar/Cisco Partnership
961	11/8/2000	DX 482	Winstar Secures Over \$1 Billion in Additional Financing Agreements: Company Funded Into 2002 (Krozsner Report document)
962	11/10/2000	DX 483	D. Nidowicz E-mail to F. Rubin RE: cash issues

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

963	11/10/2000	DX 484	F. Rubin letter to M. Hund-Mejean re: Winstar/Lucent Financing
964	11/10/2000	DX 485	F. Jules E-Mail to N. Kantor RE: 2000 capex forecast
965	11/13/2000	DX 486	F. Rubin letter to M. Hund-Mejean re: winstar/lucent financings
966	11/13/2000	DX 487	F. Rubin letter to M. Hund-Mejean re: winstar/lucent financings
967	11/14/2000	DX 488	N. Kantor e-mail to mfink@winstar.com; B. McGuire; R. Uhl etc re: the eagle has landed
968	11/15/2000	DX 489	L. Rogers e-mail to P. Derrick, M. Keefe and W. Quinn re: Winstar Letter of November 13.
969	11/16/2000	DX 490	P. Hayes E-Mail to M. Hund-Mejean RE: Winstar
970	11/16/2000	DX 491	L. Rogers e-mail to D. Harris, P. Derrick, R. Mark, M. Montemarano, et al re: Fred Rubin Letter.
971	11/16/2000	DX 492	V. Petrini E-Mail to D. Harris RE: Winstar Services Agreement Conference Call
972	11/16/2000	DX 493	Winstar Capital Corp. Base Case Model Covenants (Collins Report document)
973	11/18/2000	DX 494	B. Gennet E-mail to D. Parks et. al. RE: Data products business case
974	11/19/2000	DX 495	M. Hund-Mejean e-mail to D. Harris re: winstar
975	11/20/2000	DX 496	F. Jules E-mail to N. Kantor RE: 2000 projection 11-15
976	11/20/2000	DX 497	D. Ackerman E-Mail to N. Kantor RE: Lucent 2001 Proposal
977	11/20/2000	DX 498	M. Hund-Mejean and D. Harris Letter to F. Rubin RE: interpretation of response and response to proposal
978	11/20/2000	DX 499	J. Everding e-mail to N. Marino re: Lucent deal for 2001
979	11/21/2000	DX 500	D. Harris e-mail to C. Spurrier re: Sept 20 meeting with Nate Kantor.
980	11/27/2000	DX 501	K. Monaco E-mail to R. Uhl, F. Rubin, D. Briggs RE: Summary of Bank & Lucent terms
981	11/28/2000	DX 502	F. Rubin e-mail to R. Uhl re: 3% fee to Lucent
982	11/29/2000	DX 503	Draft-Lucent/Winstar Relationship
983	11/29/2000	DX 504	M. Hund-Mejean e-mail to J. Sasvari re: Flow Chart for Winstar.
984	11/30/2000	DX 505	R. Kipke e-mail to D. Huber, B. Zlotnick, Ratchford, D. Bruster and G. Garrett re: Jeopardy on Schedule Revision.
985	11/30/2000	DX 506	Notice of Request for Borrowing (Draw Request)
986	11/30/2000	DX 507	M. Montemarano e-mail to C. Kelly re: immediate attention requested Winstar services
987	11/30/2000	DX 508	A. Alfred E-Mail to D. Harris, E. Perricone, L. Rogers, L. St Peter, etc RE: Winstar
988	12/1/2000	DX 509	F. Rubin E-Mail to D. Nidowicz RE: Lucent Balances
989	12/1/2000	DX 510	R. Uhl e-mail to dharrisbrown@lucent.com re: Pay down of our vender financing obligation to Lucent
990	12/1/2000	DX 511	D. Nidowicz E-mail to R. Uhl RE: Lucent Balances
991	12/3/2000	DX 512	M. Hund-Mejean e-mail to E. Perricone re: Winstar Due Diligence Update.
992	12/5/2000	DX 513	F. Rubin E-mail to R. Uhl, T. Graham, K. Zinghini RE: FW:
993	12/5/2000	DX 514	Rick Uhl's Call List
994	12/5/2000	DX 515	E. Perricone letter to F. Rubin re: Cisco and Compaq financings.
995	12/6/2000	DX 516	Amendment No. 2 and New Lender Agreement
996	12/6/2000	DX 517	Winstar 8-K (Krozsner Report document)
997	12/6/2000	DX 518	K. Chawla e-mail to F. Rubin; K. Monaco; K. Zinghini re: congratulations
998	12/1/2000	DX 519	A. Alfred E-Mail to A. Carrone, A. Derksen, A. Jerden, B. Moron, etc RE: Winstar Repayment
999	12/7/2000	DX 520	F. Rubin E-mail to K. Chawla, K. Zinghini RE: Congratulations
1000	12/7/2000	DX 521	F. Rubin letter to E. Perricone re: Winstar's wire transfer of \$188,180,000.00 to Lucent.
1001	12/7/2000	DX 522	E. Perricone e-mail to F. Rubin re: Prepayment 12/7/00.
1002	12/8/2000	DX 523	W. Fullerton E-mail to D. Hopkins, M. White, M. Montemarano RE: Winstar Services Revenue Recognition
1003	12/8/2000	DX 524	F. Jules e-mail to J. Marco re: Opportunities with Cisco

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1004	12/8/2000	DX 525	K. Monaco letter to B. Keller re: materials requested by E. Perricone in e-mail message of 12/04/00.
1005	12/11/2000	DX 526	D. Ackerman E-Mail to J. Everding RE: Enterprise Integration Lab
1006	12/11/2000	DX 527	N. Kantor E-Mail to N. Marino RE: Cisco Meeting Outline
1007	12/11/2000	DX 528	M. Keefe e-mail to K. Zinghini re: Winstar Cisco Guaranty.
1008	12/13/2000	DX 529	H. Shartel E-mail to F. Rubin, R. Uhl RE: AFC-Deferred Inventory
1009	12/13/2000	DX 530	E. Perricone Memo to M. Hund-Mejean RE: Winstar Refinance Provisions
1010	12/13/2000	DX 531	W. Fullerton e-mail to M. Montemarano re: winstar services revenue recognition
1011	12/14/2000	DX 532	F. Jules E-Mail to D. Ackerman RE: Lucent
1012	12/14/2000	DX 533	C. Schoettle E-Mail to D. Harris RE: Winstar Broadband Radios
1013	12/15/2000	DX 534	F. Rubin Letter to E. Perricone re: WVF-1 LLC
1014	12/15/2000	DX 535	DELETED
1015	12/15/2000	DX 536	D. Nidowicz E-mail to F. Rubin, R. Uhl RE: Lucent 3%
1016	12/15/2000	DX 537	D. Harris E-mail to R. Uhl
1017	12/15/2000	DX 538	R. Uhl e-mail to mexadakilos@winstar.com re: End of Quarter Deal
1018	12/16/2000	DX 539	B. Rouhana E-Mail to N. Kantor RE: Plan C
1019	12/18/2000	DX 540	M. Hund-Mejean E-Mail to: E. Perricone, M. Keefe, R. Mark, M. Montemarano, C. Spurrier RE: Winstar-Request for Credit Memo to reduce Lucent Loans below \$500M
1020	12/18/2000	DX 541	J. Diroma e-mail to R. Mark; W. Fullerton ect. Re: winstar 4Q credits owed
1021	3/31/2000	DX 542	L. Hicks fax to R. Uhl re: optical equipment bill and hold letters-Lucent
1022	12/19/2000	DX 543	F. Rubin E-Mail with Attachment to R. Uhl RE: 2000 forecast - radio movement
1023	12/19/2000	DX 544	E. Perricone letter to Winstar re: Lucent Credit Facility
1024	12/19/2000	DX 545	E. Perricone letter to F. Rubin re: Lucent Credit Facility.
1025	12/19/2000	DX 546	L. Hicks Fax to R. Uhl RE: Optical Equipment Bill and Hold Letters-Lucent
1026	12/20/2000	DX 547	Memorandum from B. Perricone and B. Keller to D. Hopkins and B. Verwaayen re: Winstar Due Diligence.
1027	12/21/2000	DX 548	F. Jules e-mail to R. Uhl re: EO3Q follow-ups
1028	12/22/2000	DX 549	A. Alfred e-mail to D. Harris, E. Perricone, L. St. Peter, et al re: Winstar \$32M Draw Request.
1029	12/27/2000	DX 550	D. Hopkins letter e-mail to P. Derrick re: 12/19/00 refinance notice and 12/22/00 drawdown request.
1030	12/27/2000	DX 551	M. Dowdy e-mail to D. Harris re: Financing Summary
1031	12/27/2000	DX 552	M. Montemarano e-mail to C. Carroll, R. Mark, S. Rosen, M. Keefe, et al. re: Winstar \$32M Draw Request.
1032	12/27/2000	DX 553	E-mail re: Winstar \$32M Draw Request.
1033	12/28/2000	DX 554	2000 Capex Forecast
1034	12/28/2000	DX 555	B. Zlotnick e-mail to L. Hicks re: LighTrade Resell.
1035	12/28/2000	DX 556	R. Uhl letter to M. Montemarano re: wire transfer
1036	12/28/2000	DX 557	D. Hopkins E-Mail to M. Hund-Mejean, D. Harris, M. Montemarano RE: winstar
1037	12/29/2000	DX 558	F. Rubin E-mail to D. Nidowicz, R. Uhl, K. Monaco RE: Lucent borrowing
1038	12/29/2000	DX 559	D. Ackerman E-mail to R. Uhl, F. Jules, N. Kantor, B. Rouhana RE: Direct update
1039	12/29/2000	DX 560	P. Derrick e-mail to M. Montemarano (cc: D. Hopkins, B. Verwaayen, M. Hund-Mejean, D. Harris, C. Carroll, E. Perricone, K. DaSilva and M. Gibbens re: payments to Winstar based on Agreement with Winstar chairman, president and CFO.
1040	12/29/2000	DX 561	Notice of Request for Borrowing (Draw Request)
1041	12/29/2000	DX 562	N. Kantor e-mail to R. Uhl re: Lucent borrowing
1042	12/29/2000	DX 563	Addendum to Supply Agreement By and Between Winstar Communications, Inc. and Lucent Technologies, Inc.

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1043	12/29/2000	DX 564	C. Carroll e-mail to P. Derrick re: winstar
1044	12/31/2000	DX 565	Data Telco Cost of Revenue
1045	1/2/2001	DX 566	B. Rouhana e-mail to N. Kantor re: lucent
1046	1/2/2001	DX 567	M. Keefe e-mail to K. Zinghini re: Winstar Compaq Guaranty.
1047	1/3/2001	DX 568	D. Ackerman e-mail to F. Jules re: Direct update
1048	1/3/2001	DX 569	W. Fullerton E-mail to M. Weinman, M. Alvarez, J. Diroma, etc. RE: Winstar
1049	1/4/2001	DX 570	J. Diroma E-Mail to S. Evans RE: Winstar/Adelphia
1050	1/8/2001	DX 571	Cisco Systems
1051	1/8/2001	DX 572	A. Lucido e-mail to D. Harris; V. Petrini; K. O'Grady ect Re: winstar profit analysis
1052	1/9/2001	DX 573	D. Briggs E-Mail to M. Davis, K. Pisciotto, L. Rees, A. Rachkov
1053	1/9/2001	DX 574	Lucent Technologies Presentation by Nate Kantor
1054	1/9/2001	DX 575	F. Jules E-mail to N. Kantor RE: q101 capex estimate
1055	1/9/2001	DX 576	D. Harris letter to R. Uhl re: charges associated with the financing Agreement
1056	1/14/2001	DX 577	D. Hopkins E-Mail to M. White, P. Derrick, D. Harris etc. RE: winstar meeting.montemarano notes
1057	1/16/2001	DX 578	A. Lucido E-Mail to M. Montemarano RE: Please Read Prior to your Winstar CT Meeting
1058	1/17/2001	DX 579	L. Fawcett E-Mail to M. Waugh RE: WinStar Services Agreement
1059	1/17/2001	DX 580	M. Montemarano Letter to R. Uhl RE: Lucent Credit Facility
1060	1/17/2001	DX 581	D. Harris letter to R. Uhl re: Charges associated with the financing Agreement
1061	1/18/2001	DX 582	Standard & Poor's Industry Survey re: Communications Equipment
1062	1/19/2001	DX 583	D. Harris E-mail to R. Uhl RE: letter
1063	1/22/2001	DX 584	D. Christian E-Mail to M. Montemarano RE: WinStar Statement, January 22, 2001
1064	1/23/2001	DX 585	M. Montemarano E-Mail to C. McGovern RE: Winstar
1065	1/23/2001	DX 586	Minutes of a meeting of the board of Directors of winstar communications
1066	1/24/2001	DX 587	D. Harris letter to R. Uhl re: charges associated with the financing Agreement
1067	1/26/2001	DX 588	R. Uhl E-Mail with Attachment to F. Rubin, K. Zinghini RE: Winstar surcharge information
1068	1/29/2001	DX 589	D. Harris E-Mail to D. Ackerman, R. Uhl RE: Winstar services outsourced to Lucent
1069	1/29/2001	DX 590	V. Hawkins E-Mail to V. Petrini RE: SNC/SNMS Complaints
1070	1/29/2001	DX 591	E. Perricone E-mail with attachments to D. Hopkins, B. Verwaayen RE: Winstar Due Diligence
1071	1/30/2001	DX 592	M. Montemarano Letter to R. Uhl RE: capital draw down budget
1072	1/30/2001	DX 593	D. Harris E-Mail to M. Montemarano, C. Spurrier, B. Verwaayen, N. Kantor, R. Uhl, F. Jules, D. Ackerman
1073	2/1/2001	DX 594	R. Uhl E-Mail to Monaco RE: Cash Forecast
1074	2/2/2001	DX 595	B. Zlotnick e-mail to L. Hicks re: Lucent Converged Architecture Update.
1075	2/5/2001	DX 596	R. Uhl E-Mail to N. Kantor RE: Anticipated LU Borrowings
1076	2/5/2001	DX 597	R. Uhl E-mail to M. Montemarano RE: Anticipated LU Borrowings
1077	2/5/2001	DX 598	R. Uhl letter to M. Montemarano re: credit Agreements
1078	2/6/2001	DX 599	M. Montemarano Letter to R. Uhl RE: Capital Expense forecast
1079	2/6/2001	DX 600	R. Uhl e-mail to F. Rubin re: Anticipated LU Borrowings.
1080	2/6/2001	DX 601	M. Montemarano E-mail to E. Perricone, J. Ayre, D. Harris, A. Carrone, etc. RE: Winstar drawdown 2/5/01
1081	2/6/2001	DX 602	M. Montemarano e-mail to K. Becker, P. Derrick, W. Quinn, et al re: papertrail of Winstar compliance.
1082	2/6/2001	DX 603	C. McGovern e-mail to C. Spurrier; B. Verwaayen; D. Harris re: winstar letter-2/6/01
1083	2/6/2001	DX 604	J. Diroma E-Mail to L. Baldwin RE: Winstar/Adelphia
1084	2/6/2001	DX 605	Lucent Invoice #SU101858 to Winstar (Terrell Declaration Exhibit 2)
1085	2/7/2001	DX 606	R. Uhl E-Mail to F. Rubin, K. Zinghini RE: Lucent

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

1086	2/8/2001	DX 607	F. Jules E-mail to D. Ackerman RE: nortel
1087	2/8/2001	DX 608	Winstar/Lucent Major Accomplishments Executive Summary
1088	2/12/2001	DX 609	G. Garrett e-mail to L. Fawcett re: Jan 2001 CRD Performance.
1089	2/13/2001	DX 610	C. McGovern E-Mail w/ Attachment to S. Rosen RE: Response to Winstar
1090	2/15/2001	DX 611	D. Nidowicz e-mail to K. Monaco re: Lucent unused line fee
1091	2/20/2001	DX 612	Memorandum from J. Desmond, G. Goldman, and P. Cummings at Grant Thornton to B. Rouhana, N. Kantor, T. Graham, and R. Uhl re: Follow-up to Meeting with Winstar Management Held on Tuesday, February 20, 2001.
1092	2/20/2001	DX 613	DELETED
1093	2/21/2001	DX 614	W. Quinn E-Mail to M. Montemarano, D. Harris, G. Caviness, etc RE: Winstar loan balance
1094	2/22/2001	DX 615	J. Cocito e-mail to gmloney@winstar.com and frubin@winstar.com re: Lucent Loan Balances
1095	2/23/2001	DX 616	M. Montemarano E-mail to G. Caviness RE: action: Winstar drawdown request for February 28, 2001
1096	2/23/2001	DX 617	Notice of Request for Borrowing (Draw Request)
1097	2/24/2001	DX 618	P. Cummings to Winstar Communications, Inc RE: Follow-up Discussion with Bill Rouhana and Senior Management on February 23, 2001
1098	2/26/2001	DX 619	L. Kroencke E-Mail with Attachment to E. Cho RE: MSA Tracking
1099	2/27/2001	DX 620	D. Nidowicz E-mail to R. Uhl RE: Lucent 3%
1100	2/27/2001	DX 621	J. Baylis E-mail to D. Briggs RE: Lucent Covenants
1101	2/27/2001	DX 622	Press Release re: Winstar Reports Strong Fourth Quarter Results.
1102	2/27/2001	DX 623	J. Stephens e-mail to winstar re: Executive memo and press release Winstar results continue sharp improvement.
1103	3/1/2001	DX 624	DELETED
1104	3/1/2001	DX 625	M. Montemarano Letter to R. Uhl RE: Lucent Credit Facility
1105	3/1/2001	DX 626	F. Rubin e-mail to L. O'Brian and K. Monaco re: A/R problem escalation #6 - Winstar \$15M
1106	3/2/2001	DX 627	K. Monaco E-mail to N. Kantor RE: Cash Fest March 1
1107	3/4/2001	DX 628	DELETED
1108	3/6/2001	DX 629	P. Cummings Memo to B. Rouhana, N. Kantor, R. Uhl RE: Annual Audit - Significant Open Items
1109	3/9/2001	DX 630	F. Rubin E-Mail to N. Kantor, R. Uhl, T. Graham RE: Lucent Recap
1110	3/12/2001	DX 631	Winstar 2001 Plan Capitalization Issues
1111	3/12/2001	DX 632	DELETED
1112	3/13/2001	DX 633	E. Perricone memorandum to B. Verwaayen, C. Spurrier, M. Hund-Mejean, et al. re: Winstar Update.
1113	3/14/2001	DX 634	F. Rubin e-mail to D. Harris re: open items for resolution
1114	3/15/2001	DX 635	DELETED
1115	3/16/2001	DX 636	DELETED
1116	3/16/2001	DX 637	D. Ackerman e-mail to N. Kantor; fjules@winstar.com; brouhana@winstar.com re: Vender Commitments/LD Provisions
1117	3/17/2001	DX 638	D. Ackerman e-mail to N. Kantor re: Personal
1118	3/18/2001	DX 639	M. Hund-mejean e-mail to B. Verwaayen and C. Spurrier re: winstar
1119	3/19/2001	DX 640	DELETED
1120	3/21/2001	DX 641	D. Hopkins E-mail to M. Montemarano, D. Harris, M. Hund Mejean, etc RE: SPECIAL ATTENTION winstar meeting, 3/21/01
1121	3/21/2001	DX 642	M. Montemarano E-Mail to D. Harris, D. Hopkins, M. Hund Mejean etc.
1122	3/21/2001	DX 643	Memo to File from M. Montemarano
1123	3/21/2001	DX 644	Lucent Invoices to Winstar (Terrell Declaration Exhibit 4)
1124	3/23/2001	DX 645	Winstar Communications, Inc Condensed Statements of Operations with handwritten notes.
1125	3/23/2001	DX 646	B. Zlotnick E-Mail to R. Kipke RE: 400G Inventory Exchange
1126	3/24/2001	DX 647	Estimated Lucent Billing

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

1127	3/25/2001	DX 648	P. Cummings E-Mail to K. Monaco, R. Bambach, G. Maloney RE: debt covenants
1128	3/26/2001	DX 649	DELETED
1129	3/26/2001	DX 650	D. Ackerman E-Mail to N. Kantor RE: Creative Build-out
1130	3/22/2001	DX 651	Notice of request for borrowing (Draw Request)
1131	3/27/2001	DX 652	D. Ackerman E-mail to R. Uhl RE: SAIC
1132	3/28/2001	DX 653	M. Montemarano E-Mail to: M. Ambrus, K. Fitzgerald, E. Perricone etc. RE: Winstar
1133	3/28/2001	DX 654	M. Montemarano memo to file re: March 28 meeting with W. Rouhana re Winstar liquidity
1134	3/28/2001	DX 655	M. Montemarano Memo to File
1135	3/28/2001	DX 656	D. Harris E-Mail to R. Cieri, S. Winn, S. LoBlondo, etc. RE: Winstar Take-or-Pay Contract LW00146958-LW00146962A
1136	3/29/2001	DX 657	DELETED
1137	3/29/2001	DX 658	M. Montemarano Memo to File
1138	3/29/2001	DX 659	J. Diroma e-mail to W. Fullerton re: winstar services pass thru
1139	3/29/2001	DX 660	H. Shartel E-Mail to R. Uhl RE: Inventory Analysis 03282001
1140	3/29/2001	DX 661	J. Diroma e-mail to W. Fullerton re: winstar services pass thru
1141	3/29/2001	DX 662	Draft 12/00 financials (Collins Report document)
1142	3/30/2001	DX 663	M. Keefe Letter to Winstar Communications, Inc. RE: Lucent Credit Facility
1143	3/30/2001	DX 664	DELETED
1144	3/30/2001	DX 665	B. Stranzl E-mail to R. Uhl RE: Winstar
1145	3/30/2001	DX 666	B. Wilson E-Mail to D. Briggs re: Draft Lehman Note.
1146	3/30/2001	DX 667	M. Keefe e-mail to D. Harris, S. Rosen, R. Mark etc., re: Winstar
1147	3/27/2001	DX 668	Notice of Request for Borrowing (Draw Request)
1148	4/2/2001	DX 669	G. Simpson E-mail to D. Nidowicz RE: Q1 2001 Financable Labor
1149	4/4/2001	DX 670	K. Monaco e-mail to D. Nidowicz re: payments
1150	4/5/2001	DX 671	M. Montemarano letter to Winstar Communications, Inc. (cc: W. Rouhana) re: Lucent's suspension of shipment of products and the provision of services to Winstar due to evidence of Winstar's financial distress.
1151	4/6/2001	DX 672	Lucent letter to Winstar re: Lucent Credit Facility
1152	4/6/2001	DX 673	M. Montemarano letter to Winstar re: Lucent Credit Facility
1153	4/6/2001	DX 674	Lucent Invoice #SU108080 to Winstar (Terrell Declaration Exhibit 3)
1154	4/9/2001	DX 675	E. Perricone Letter to Winstar Communications RE: Lucent credit facility - signed by K. Zinghini, T. Graham
1155	4/9/2001	DX 676	E. Perricone letter to Winstar re: Lucent Credit Facility
1156	4/9/2001	DX 677	Lucent letter to Winstar re: Lucent Credit Facility
1157	4/9/2001	DX 678	R. Uhl's notes
1158	4/11/2001	DX 679	M. Montemarano letter to D. Ackerman re: payment assurance.
1159	4/1/2001	DX 680	M. Montemarano letter to D. Ackerman re: response to Winstar April 10 letter.
1160	4/12/2001	DX 681	L. Sadrian Letter to Winstar Communications, B. Rouhana RE: Obligations under Supply Agreement
1161	4/12/2001	DX 682	DELETED
1162	4/13/2001	DX 683	L. Sadrian letter to Winstar re: Lucent Credit Facility.
1163	4/15/2001	DX 684	L. Sadrian Letter to Winstar Communications RE: Lucent Credit Facility
1164	4/16/2001	DX 685	L. Sadrian Letter to WinStar Communications, Inc. RE: Lucent Credit Facility
1165	5/23/2000	DX 686	Notice of Request for Borrowing (Draw Request)
1166	5/31/2000	DX 687	D. Hopkins e-mail to W. Viqueira re: Winstar
1167	4/18/2001	DX 688	Senior Secured Super-Priority Debtor in Possession Revolving Credit Agreement (Krozsner Report document)
1168	4/19/2001	DX 689	M. Dowdy e-mail to D. Hsu forwarding Presentation transition plan for lucent resource integration
1169	5/6/2001	DX 690	Lucent billing for capita (spread sheet)
1170	5/8/2001	DX 691	K. Monaco E. Mail to D. Dei RE: Credit Approval

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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1171	5/8/2001	DX 692	K. Cavanaugh E-mail to B. Rouhana RE: WSJ
1172	7/13/2000	DX 693	K. Monaco E-mail to S. Kasera RE: Siemens-Answer per your request
1173	5/8/2001	DX 694	K. Monaco E-mail to F. Rubin RE: Management Case: Cash Receipts & Disbursements
1174	5/8/2001	DX 695	N. Kantor E-mail to B. Rouhana RE: Winstar Partnership Concept
1175	5/8/2001	DX 696	K. Cavanaugh E-mail to N. Kantor, R. Uhl RE: Call with Barron's
1176	5/8/2001	DX 697	D. Nidowicz E-Mail to J. Diroma RE: Winstar Services
1177	6/9/2001	DX 698	R. Uhl E-mail to G. Maloney RE: Lucent Services
1178	3/3/2004	DX 699	Ackerman SEC Transcript
1179	8/16/2002	DX 700	DELETED
1180	3/30/2004	DX 701	Letter from K. Collins to M. Paskin enclosing Winstar Valuation Expert Report
1181	3/30/2004	DX 702	Expert Report of Christopher Stark CS Hawthorn Inc.
1182	3/30/2004	DX 703	DELETED
1183	3/30/2004	DX 704	DELETED
1184	3/7/2000	DX 705	J. Dwyer E-mail to N. Kantor RE: Lucent Status - Subcontracting Agreement
1185	11/7/2000	DX 706	M. Hund-Mejean letter to R. Uhl re: Lucent Vendor Financing.
1186	11/8/2000	DX 707	Delegation of Authority (Deborah Hopkins) - 11/07/00 Letter from M. Hund-Mejean To R. Uhl RE: Lucent Vendor Financing
1187	9/28/2000	DX 708	Partnership Deal Source: D. Harris
1188	12/4/2000	DX 709	M. Montemarano E-Mail to P. Derrick, M. Hund-Mejean
1189	12/27/1999	DX 710	Past Due as of: 12/27/99 = \$539M Top 7
1190	9/1/2000	DX 711	K. Chawla E-Mail to T. Deutsch RE: The Deal
1191	11/3/2000	DX 712	Winstar and BNY Letter regarding Term Loan C
1192	9/19/2000	DX 713	N. Aversano E-Mail to N. Kantor RE: Winstar/Lucent Deal
1193	3/24/2001	DX 714	T. Graham invoice J. Ritter re: Invoice
1194	3/30/1999	DX 715	DELETED
1195	2/17/2000	DX 716	L. Rogers e-mail to J. Orlando; W. Viquiera; N. Aversano; J. Cocito re: Winstar
1196	1/5/1999	DX 717	DELETED
1197	11/6/2000	DX 718	Winstar letter to Siemens re: winstar - term loan c
1198	9/1/2000	DX 719	F. Rubin e-mail to K. Chawla re: financing structure
1199	4/5/2000	DX 720	N. Holcomb letter to A. Zendle re: Siemens proposal
1200	11/15/2000	DX 721	Daniel_Csillag@lnotes5bankofny.com e-mail to siddharth kasera@sfs siemens.com re: winstar capital corp amendment request
1201	3/23/1999	DX 722	R. Haffar e-mail to bmcguire@wns-k7 winstar.com re: Lucent Revenue Commitment Call
1202	1/13/2000	DX 723	P. Soltesz e-mail to A. Zendle re: DSLAM architecture impacts on PMP and vice versa
1203	5/2/2000	DX 724	D. Ackerman e-mail to A. Zendle re: Siemens Proposal
1204	6/27/2000	DX 725	DELETED
1205	10/13/2000	DX 726	DELETED
1206	12/1/2000	DX 727	F. Rubin E-Mail to B. Zlotnick RE: International Cap Ex Allocation
1207	5/8/2001	DX 728	DELETED
1208	4/29/2001	DX 729	K. Devany E-Mail to D. Huber, M. Fink, M. Roberts, J. Everding RE: URGENT! Contract Review Process due Friday April 27, 2001
1209	4/9/2001	DX 730	R. Uhl Letter to B. Rouhana RE: Lucent Objections
1210	12/29/2000	DX 731	K. Monaco E-Mail to R. Uhl, T. Graham RE: Permitted Investments Covenant Report: Bank
1211		DX 732	R. Haffar Letter to M. Wilson RE: Agreement for Network Built-out Services
1212			INTENTIONALLY LEFT BLANK
1213	3/20/2000	DX 733	C. Naylor e-mail to V. Petrini, T. O'Hara; M. Epstein; L. Rogers re: Lucent Supply Agreement.
1214	3/7/2001	DX 734	E. Perricone E-Mail to P. Derrick, M. Montemarano, C. Spurrier, D. Harris, etc RE: Winstar Finance Discussion

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

1215	3/12/1999	DX 735	W. Plunkett E-Mail to N. Aversano RE: A-1 FINAL: Nate Kantor - Briefing
1216	1/4/2001	DX 736	E. Perricone E-Mail to D. Hopkins RE: Clarifications and Wish List-Winstar
1217	9/7/2000	DX 737	L. Rogers E-Mail to D. Forrester RE: Urgent WinStar HK
1218	5/24/2000	DX 738	J Cocito e-mail to W. Viqueira; N. Aversano; E. Perricone; ect. re: winstar updates
1219	5/17/2004	DX 739	SEC Complaint, Jury Demand
1220	9/1/2001	DX 740	F. Rubin E-Mail to S. Kasera, K. Monaco RE: Financing Structure
1221		DX 742	Invoice
1222		DX 743	INVOICE DETAIL - ER903765 (highlighted version)
1223		DX 744	Invoice
1224		DX 745	Winstar Inventory Calculation (Pocalyko Cross)
1225		DX 746	Invoice Services Manual
1226	11/14/2000	DX 747	Email from P. Derrick to M. Hund-Mejen RE: Winstar bank line increase
1227		DX 748	Bates Combined into one chart (PX 306)
1228	5/11/2005	DX 749	List of Exhibits to Admit
1229		DX A	Elizabeth Perricone's Bridge Statement
1230		DX B	Portion of Complaint, Pages 54-56
1231		DX E	Elizabeth Perricone Offer of Proof designations of July 24, 2001
1232		DX F	Richard Uhl Offer of Proof designations of July 25, 2001
1233		DX G	Leslie Roger Offer of Proof designations of Aug. 8, 2001
1234		DX H	Kevin Monaco Offer of Proof designations of July 11, 2001 and Nov. 26, 2003
1235	5/4/2000	DX I	Section of Credit Agreement among WVF-I LLC and Lucent (also DX 29)
1236		DX K	Timothy Graham Offer of Proof designations of July 24, 2001
1237	5/4/2000	DX L	Section of Credit Agreement (also DX 29)
1238		DX M	Gary Goldman Offer of Proof designations of Feb. 20, 2004
1239		DX V	Kenneth Zinghini Offer of Proof designations of July 12, 2001
1240	6/20/2001	DX W	Lucent Notice of Deposition to depose representative of Winstar
1241	3/29/2004	DX Z	Expert Report of John I. Salomon
1242		DX AA	List of exhibits submitted by Lucent as an Offer of Proof

Plaintiff (PX) Trial Exhibits

Tab	Date	Exhibit No.	Description of Item
1243		PX 1	Notes re: Lucent Strategic Partnership.
1244	9/30/1998	PX 2	N. Aversano e-mail to N. Kantor attaching Winstar and Lucent Technologies Framework for a Strategic Partnership.
1245	5/8/2001	PX 3	N. Kantor e-mail to B. Rouhana re: Winstar Partnership Concept.
1246	5/8/2001	PX 4	N. Kantor e-mail to B. Rouhana re: Strategic Partnership (responding to 9/30/98 N. Aversano e-mail).
1247	10/2/1998	PX 5	Bullet-point notes re: Winstar/Lucent Partnership Concept.
1248	10/3/1998	PX 6	N. Kantor e-mail to N. Aversano re: Winstar Partnership Concept.
1249	10/7/1998	PX 7	N. Aversano fax to R. Haffar re: Winstar/Lucent Partnership Concept.
1250		PX 8	Presentation re: Best of Breed and scope of partnership structure.
1251	10/19/1998	PX 9	C Dickson memo to W. Rouhana, N. Kantor, S. Chrast, et al re: October 19, 1998.
1252	10/22/1998	PX 10	Press release entitled "S2 Billion Winstar/Lucent Strategic Agreement to Expand Winstar's Broadband Network."
1253	2/18/2000	PX 11	Winstar - Lucent Partnership Executive Review.
1254	7/14/2000	PX 12	R. Uhl e-mail to N. Kantor re: Dinner meeting with Debbie Hopkins.
1255		PX 13	Agreement for Network Buildout Services.

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1256	5/8/2001	PX 14	N. Kantor e-mail to B. Rouhana re: Winstar Partnership Concept
1257	9/22/2000	PX 15	D. Harris e-mail to N. Kantor and F. Jules re: Winstar Services Purchase Order.
1258	9/24/2000	PX 16	N. Kantor e-mail to N. Aversano re: Winstar Services Purchase Order.
1259	9/29/2000	PX 17	R. Uhl memorandum to D. Ackerman, F. Jules, N. Kantor, J. Maloney, F. Rubin and B. Zlotnick re: Winstar & Lucent.
1260	6/16/1999	PX 18	Hub and B-Site Addendum to the Supply Agreement between Winstar Communications, Inc. and Lucent Technologies Inc.
1261	7/11/2000	PX 19	Optical Network Addendum to the Supply Agreement between Winstar Communications, Inc. and Lucent Technologies Inc.
1262	9/29/2000	PX 20	Software Pool Agreement
1263	10/13/2000	PX 21	D. Ackerman e-mail to J. Everding re: Transition Proposal.
1264	12/14/2000	PX 22	R. Uhl e-mail to F. Jules, N. Kantor and F. Rubin re: call with Carole Spurrier and Debbie Harris.
1265	12/22/2000	PX 23	V. Petrini e-mail w/ handwritten notes to N. Kantor re: Conference Number.
1266		PX 24	Winstar Broadband Services for Businesses.
1267	1/11/2001	PX 25	D. Ackerman e-mail to N. Kantor and F. Jules re: Feedback from January 9th Senior Executive Meeting with Winstar.
1268	1/17/2001	PX 26	D. Harris e-mail to N. Kantor, F. Jules, R. Uhl and D. Ackerman re: Agenda for January 17, 2001 meeting.
1269	1/17/2001	PX 27	Agenda for Lucent - Winstar Meeting.
1270	1/17/2001	PX 28	Lucent's Vendor Integration Plan for Winstar.
1271	1/16/2001	PX 29	Winstar Global 2001 Budget Analysis (LU gets all Hubs & Bs and Metros).
1272	1/29/2001	PX 30	D. Harris e-mail to D. Ackerman and R. Uhl re: Winstar services outsourced to Lucent.
1273	1/30/2001	PX 31	D. Harris e-mail to M. Montemarano, C. Spurrier, B. Verwaayen, et al. re: Hubs and B-Sites Status Report.
1274	2/8/2001	PX 32	D. Ackerman e-mail to N. Kantor, R. Uhl, F. Jules, et al. re: Proposed Agenda for Winstar/Lucent Meeting Friday 2/9/01.
1275	2/9/2001	PX 33	Winstar Project Assessment Preliminary Findings Briefing.
1276	2/9/2001	PX 34	Proposed Relationship Structure between Winstar - Lucent.
1277	5/8/2001	PX 35	N. Kantor e-mail to F. Rubin re: open items for resolution.
1278		PX 36	Lucent/Winstar Strategic Partnership 2001 Opportunity.
1279	12/15/2000	PX 37	M. Carney e-mail to D. Nidowicz re: Approval for SI-21952-119.
1280	3/27/2001	PX 38	F. Jules e-mail to N. Kantor re: Lucent contract for 2001.
1281	3/30/2001	PX 39	M. Keefe letter to Winstar Communications, Inc. re: Lucent Credit Facility.
1282	3/30/2001	PX 40	M. Montemarano letter to Robert McGuire re: termination of Master Service Agreement.
1283	3/30/2001	PX 41	M. Keefe letter to Winstar Communications, Inc. re: Winstar Information Regarding Collateral.
1284	11/6/2000	PX 42	J. Ritter e-mail to B. Zlotnick and L. Hicks re: presentation on proposed addendum to supply Agreement.
1285	11/10/2000	PX 43	F. Jules e-mail to J. Marco re: risks and benefits of proposed actions.
1286	8/30/2000	PX 44	L. Hicks e-mail to D. Ackerman re: Lucent strategy
1287	8/21/2000	PX 45	Nate/Nina Meeting - NATE'S MISSION: TO GET LUCENT TO AGREE TO ALL POINTS LISTED BELOW
1288	9/19/2000	PX 46	L. Hicks e-mail to D. Ackerman re: Lucent meeting 9/19
1289	12/29/1999	PX 47	L. Hicks e-mail to C. Naylor re: EOQ Letter - Edit
1290	12/11/2000	PX 48	D. Ackerman e-mail to J. Everding re: Winstar/Lucent Deal
1291	12/11/2000	PX 49	D. Ackerman e-mail to J. Everding re: Winstar/Lucent deal
1292	9/20/2000	PX 50	L. Hicks e-mail to R. Uhl re: Lucent EOQ deal issues
1293	9/20/2000	PX 51	L. Hicks e-mail to R. Uhl re: Deal Documents
1294	12/11/2000	PX 52	D. Ackerman e-mail to J. Everding re: Business Deal V2
1295	12/11/2000	PX 53	D. Ackerman e-mail to J. Everding re: 3Q Software Pool with comments

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1296	12/11/2000	PX 54	D. Ackerman e-mail to J. Everding re: software pool notes
1297	10/23/2000	PX 55	L. Hicks e-mail to D. Ackerman, B. Zlotnick and D. Huber re: Lucent/Winstar EOQ disconnects
1298	2/8/2001	PX 56	L. Hicks fax to R. Uhl re: Lucent 3Q Recap
1299	10/19/2000	PX 57	Proposals to address both overruns and new end quarter request
1300	12/19/2000	PX 58	L. Hicks fax to R. Uhl re: Optical Equipment Bill and Hold Letters - Lucent
1301	12/11/2000	PX 59	D. Ackerman e-mail to J. EEverding re: Lucent Q3 Services
1302	9/22/2000	PX 60	D. Harris letter to D. Ackerman re: services in support of the Winstar network deployment
1303	9/22/2000	PX 61	D. Harris letter to R. Uhl re: services in support of the Winstar network deployment
1304	12/11/2000	PX 62	D. Ackerman e-mail to J. EEverding re: Lucent Contractor Services
1305	7/10/2000	PX 63	B. Zlotnick e-mail to L. Hicks re: B-Site Pricing
1306	11/8/2000	PX 64	L. Hicks memo to D. Ackerman re: Ackerman/Plunkett EOQ Issues meeting
1307	9/20/2000	PX 65	B. Zlotnick e-mail to F. Jules, R. Uhl, N. Kantor, F. Rubin and D. Ackerman re: WNSS 2000 Capital Plan - Action Items
1308	12/15/2000	PX 66	R. Uhl e-mail to mexadaktilos@winstar.com re: End of Quarter Deal
1309		PX 67	D. Ackerman e-mail to J. Everding re: Lucent 3Q revenue deal write up
1310	9/27/2000	PX 68	R. Helfrich e-mail to L. Hicks re: Bill & Hold Letter
1311	12/27/2000	PX 69	B. Zlotnick e-mail to K. Monaco and F. Rubin re: Lucent equipment acceptance
1312	9/29/2000	PX 70	B. Zlotnick letter to V. Petrini re: Bill and Hold Letter for Lucent Optical Equipment.
1313	9/29/2000	PX 71	B. Zlotnick letter to V. Petrini re: Bill and Hold Letter for Lucent Stinger DSLAMs and cabinets.
1314	1/18/2001	PX 72	DELETED
1315	9/29/2000	PX 73	B. Zlotnick e-mail to F. Rubin re: Deal Parameter Documents.
1316	9/18/2000	PX 74	L. Hicks e-mail to D. Ackerman and B. Zlotnick re: 9/19/00 Lucent meeting.
1317	12/11/2000	PX 75	D. Ackerman e-mail to J. Everding re: EoQ Deal.
1318	12/11/2000	PX 76	D. Ackerman e-mail to J. Everding re: Lucent Equipment.
1319		PX 77	DX 56
1320	10/4/2000	PX 78	F. Rubin e-mail to R. Uhl re: Capital Spend - 2000 and 2001.
1321	12/15/2000	PX 79	R. Uhl e-mail to mexadaktilos@winstar.com re: 3Q Software Pool with comments.
1322	1/3/2001	PX 80	G. Simpson e-mail to F. Rubin and B. Zlotnick re: Revised Lucent Credits.
1323	9/22/2000	PX 81	DELETED
1324	9/29/2000	PX 82	R. Uhl memo to D. Ackerman, F. Jules, N. Kantor, et al. re: Lucent acceptance of Winstar Service charges.
1325	8/3/1999	PX 83	Notes re: Winstar/Lucent Turn-Key process meeting
1326	8/9/2000	PX 84	M. Dowdy e-mail to J. Diroma re: Lucent Bill
1327	3/21/2001	PX 85	M. Montemarano e-mail to C. Spurrer; M. Pires and D. Harris re: chart that Winstar sent me
1328	9/18/2000	PX 86	M. Kerner e-mail to N. Aversano and W. Plunkett re: Status of Winstar account
1329	9/24/2000	PX 87	N. Kantor e-mail to N. Aversano re: Winstar services purchase order
1330	9/25/2000	PX 88	J. Cocito e-mail to F. Manzi re: winstar services
1331		PX 89	Daily Progress Report Key Deals
1332	4/13/2001	PX 90	D. Hsu e-mail to T. O'Hara re: subcontract Agreement
1333	11/2/1999	PX 91	Notes re: Winstar Year 2000 spend meeting executive summary
1334	3/29/2001	PX 92	J. Dirome e-mail to W. Plunkett re: Winstar services pass thru
1335	12/17/1999	PX 93	J. Diroma e-mail to V. Petrini; C. Naylor; R. Helfrich re: winstar 400G Orders Call on monday 12/20/99
1336	12/20/1999	PX 94	N. Aversano e-mail to R. McGinn re: winstar
1337	12/21/1999	PX 95	C. Naylor e-mail to R. Heltrich and V. Petrini re: EOQ Letter

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

1338	12/21/1999	PX 96	Invoice - Winstar purchase order
1339	9/30/2000	PX 97	Notes re: Lucent, SPN Q1 2000 Bill and Hold Support
1340	8/1/2002	PX 98	Lucent's Responses and Objections to Plaintiffs' Third Set of Interrogatories
1341	3/31/2000	PX 99	A. Zendle letter to C. Naylor re: Optical networking equipment
1342	3/31/2000	PX 100	Notes re: Lucent service providers networks Critical Matters
1343	11/27/2000	PX 101	M. Montemarano e-mail to J. Diroma and W. Fullerton re: fiscal 2000 follow up request
1344	1/13/2000	PX 102	C. Naylor e-mail to C. Assimopoulos re: winstar confirmation letter
1345	2/29/2000	PX 103	Invoice re: Winstar Purchase Order
1346	5/24/2000	PX 104	E. Perricone e-mail to W. Viqueira; J. Cocito and N. Aversano re: winstar update
1347	12/13/2000	PX 105	Notes re: 3Q revenue request
1348		PX 106	Presentation re: Lucent Revenue Recognition Policy
1349	8/27/2000	PX 107	D. Harris e-mail to N. Aversano and D. Hopkins re: winstar briefing
1350	8/18/2000	PX 108	M. Kerner e-mail to N. Aversano and W. Plunkett re: Status of Winstar Account
1351	10/30/2000	PX 109	A. Dollins e-mail to D. Harris; V. Petrini; D. Walsh etc. re: Exec. Review and Bus. Case Approval Call
1352	9/27/2000	PX 110	N. Aversano letter to R. Uhl re: purchase order
1353	12/8/2000	PX 111	D. Ackerman e-mail to J. Everding re: services addendum
1354	12/15/2000	PX 112	A. Brunner e-mail to V. Petrini; E. De Leon; V. Esperanza etc. re: On behalf of Susan Schnell - 12/7/2000 NAR Deal Approval Notification: Winstar, Quest, and Verizon
1355	10/27/2000	PX 113	L. Fawcett e-mail to N. De Tura; T. Swift; D. Butze re: Winstar services proposal
1356		PX 114	Notes re: Business status: Winstar new service briefing
1357	11/30/2000	PX 115	Notes re: conference call
1358	12/3/2000	PX 116	D. Harris e-mail to C. Spurrier re: Winstar financial issues
1359	11/21/2000	PX 117	D. Harris e-mail to C. Spurrier re: sept. 20 meeting with Nate Kantor
1360	12/28/2000	PX 118	M. Montemarano e-mail to C. McGovern; C. Carroll re: Winstar
1361	1/5/2001	PX 119	E. Perricone e-mail to P. Derrick et al re: Winstar-Clarifications and Wish List Materials for Story Board
1362	2/2/2001	PX 120	B. Verwaayen e-mail to M. Montemarano; C. Spurrier; D. Harris re: Update to Winstar "strategy"
1363	11/21/2003	PX 121	DELETED
1364	4/17/2001	PX 122	Ackerman Affidavit
1365	10/21/1998	PX 123	Supply Agreement
1366	9/18/2000	PX 124	L. Hicks e-mail to D. Ackerman re: Lucent/Winstar EOQ disconnects
1367	9/29/2000	PX 125	W000810/ZWC0144192 B. Plunkett letter to D. Ackerman re: purchase Agreement
1368	2/7/2001	PX 126	L. Hicks fax to D. Ackerman re: Lucent 3Q Recap
1369	12/11/2000	PX 127	D. Ackerman e-mail to J. Everding re: Lucent and Capex
1370	10/20/2000	PX 128	B. Plunkett letter to D. Ackerman re: optical equipment. W333832/ZWC0144194
1371	10/6/2000	PX 129	B. Plunkett letter to D. Ackerman re: equipment and services. W000825/ZWC0144193
1372	9/29/2000	PX 130	D. Harris letter to D. Ackerman re: unexpected operating costs W000809/ZWC0144191
1373	8/20/2000	PX 131	L. Hicks e-mail to N. Kantor re: Lucent meeting talking points
1374	5/2/2000	PX 132	D. Ackerman e-mail to A. Zendle re: Siemens Proposal
1375	10/20/2000	PX 133	B. Plunkett letter to D. Ackerman re: jointly developed pricing and commitments
1376	9/22/2000	PX 134	D. Harris letter to D. Ackerman re: supply Agreement
1377	12/7/2000	PX 135	F. Rubin letter to B. Perricone re: wire transfer

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1378	11/10/2000	PX 136	W. Rouhana e-mail to N. Kantor re: Services Meeting on 15th
1379	12/11/2000	PX 137	D. Ackerman e-mail to J. Everding re: Services Meeting
1380	5/4/2000	PX 138	Credit Agreement
1381	10/16/2000	PX 139	B. Plunkett letter to D. Ackerman re: deferred billing
1382	12/11/2000	PX 140	B. Zlotnick e-mail to F. Jules and R. Fred re: Lucent and Capex
1383	12/11/2000	PX 141	D. Ackerman e-mail to J. Everding re: Winstar/Lucent deal
1384	10/23/2000	PX 142	D. Ackerman e-mail to L. Hicks re: Software pool notes
1385	1/10/2000	PX 143	RE: Communication to staff
1386	8/20/2000	PX 144	L. Hicks e-mail to N. Kantor re: Lucent meeting talking points.
1387	3/27/2001	PX 145	Notice of Request for Borrowing
1388	3/27/2001	PX 146	F. Jules to J. Marco re: Lucent Content for 2001.
1389	10/27/2000	PX 147	N. Kantor e-mail to F. Jules and R. Uhl re: 2000 Capex forecast.
1390	1/5/2001	PX 148	F. Rubin letter to R. Uhl re: LU Balance Analysis.
1391	12/19/2000	PX 149	E. Perricone letter to Winstar re: Lucent Credit Facility
1392	11/6/2000	PX 150	F. Rubin letter to Siemens AG re: Term Loan C.
1393	11/13/2000	PX 151	F. Rubin letter to M. Hund Mejean re: Winstar/Lucent Financings.
1394	11/20/2000	PX 152	M. Hund Mejean and D. Harris letter to F. Rubin re: increase in Winstar financing.
1395	9/18/2000	PX 153	M. Kerner e-mail to N. Aversano and W. Plunkett re: Status of Winstar account
1396	8/31/2000	PX 154	D. Harris e-mail to W. Plunkett and V. Heron re: Winstar Situation
1397		PX 155	Winstar notes re: negative reaction
1398	12/11/2000	PX 156	D. Ackerman e-mail to J. Everding re: Deal Documents
1399	9/19/2000	PX 157	N. Aversano e-mail to N. Kantor re: winstar/lucent deal
1400	9/24/2000	PX 158	N. Kantor e-mail to N. Aversano re: Winstar Services Purchase PX Order
1401	9/22/2000	PX 159	D. Harris e-mail to N. Aversano re: Business Deal V2
1402	12/11/2000	PX 160	D. Ackerman e-mail to J. Everding re: updated deals list
1403		PX 161	Winstar Daily Progree Report Key Deals
1404	9/29/2000	PX 162	software pool Agreement between winstar and lucent
1405	11/28/2000	PX 163	R. Rawson letter to N. Aversano re: review of a revenue recognition
1406	1/4/1999	PX 164	Agreement for network build-out services WC0011532-WC0011538 & WC0019779
1407	10/23/2000	PX 165	Lucent Technologies' Board of Directors name Henry Schacht Chairman and CEO.
1408	10/26/2000	PX 166	D. Hopkins message re: H. Schacht and W. Rouhana dinner meeting.
1409	7/15/2003	PX 167	Lucent Technologies comments on Fortune magazine article about its SEC investigation.
1410	9/25/2000	PX 168	N. Kantor e-mail to D. Ackerman, F. Jules and R. Uhl re: Updated Deals List.
1411	9/29/2000	PX 169	"Lucent Vendor Relationship Rock-Solid"
1412	4/18/2001	PX 170	Winstar v. Lucent Complaint (Adversarial Proceeding).
1413	10/19/1998	PX 171	W. Rouhana e-mail to N. Kantor, W. Rouhana, et al. re: updated materials.
1414	10/26/2000	PX 172	F. Rubin e-mail to B. Rouhana and R. Uhl re: Lucent Term Sheet.
1415	2/5/2001	PX 173	R. Uhl e-mail to N. Kantor re: Anticipated LU Borrowings.
1416	2/19/2003	PX 174	Patricia Russo named chairman of Lucent Technologies; Henry Schacht steps down, but will remain a member of the board.
1417	11/5/2001	PX 175	Deposition testimony of Henry Schacht from Aversano v. Lucent.
1418	9/10/2002	PX 176	Deposition testimony of Henry Schacht from Obtek v. Lucent.
1419	10/29/2002	PX 177	Deposition testimony of Henry Schacht from Obtek v. Lucent.
1420	11/21/2000	PX 178	Lucent Technologies identifies revenue issue from fourth fiscal quarter 2000.
1421	7/7/2003	PX 179	Article from Fortune magazine entitled, "The Whistleblower and the CEO; In the Lucent scandal, the ex-boss will walk. The woman who accused him is now an SEC target. And guess who's paying the penalty? Owners like You."
1422	10/22/1998	PX 180	\$2 Billion Winstar/Lucent Strategic Agreement to Expand Winstar's Broadband Network.

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APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

1423	12/14/2000	PX 181	J. Carter e-mail to C. Carroll, J Diroma, C. Spurrier, et al re: Winstar Agreements.
1424	1/19/2000	PX 182	J. Cocito e-mail to M. Wilson, C. Naylor and J. Diroma re: Winstar Services.
1425	1/20/2000	PX 183	J. Cocito e-mail to J. Diroma re: Winstar Services.
1426	9/12/2000	PX 184	P. Derrick e-mail to P. Hayes and J. Fong re: Commitments Forecast
1427	10/20/2000	PX 185	P. Derrick e-mail to D. Hopkins re: Winstar Refinance Notice
1428	10/20/2000	PX 186	Winstar Executive Briefing
1429	11/2/2000	PX 187	LW00201651 & LW00016795-LW00016797 P Hayes e-mail to P Derrick re: Winstar: Implications of Refinance Notice
1430	11/7/2000	PX 188	P. Hayes e-mail to P. Derrick re: Winstar Recourse Removal
1431	11/10/2000	PX 189	P. Hayes e-mail to P. Derrick and M. Keefe, Esq re: Winstar Gameplan over next few days
1432	12/8/2000	PX 190	E. Perricone e-mail to M. Hund-Mejean and D. Hopkins re: Winstar Repayment
1433	11/16/2000	PX 191	P. Hayes e-mail to M. Hund-Mejean re: Winstar
1434	11/7/2000	PX 192	M. Hund-Mejean letter to R. Uhl re: Lucent Vendor Financing
1435	6/1/2000	PX 193	L. Rogers e-mail to D. Hopkins re: Winstar
1436	8/21/2000	PX 194	L. Rogers e-mail to W. Viqueira, N. Aversano, P. Derrick; G. Harris and D. Hopkins re: Winstar
1437	8/27/2000	PX 195	D. Harris e-mail to N. Aversano and D. Hopkins re: Winstar Briefing
1438	11/10/2000	PX 196	W. Fullerton e-mail to M. Montemarano re: Winstar
1439	12/12/2000	PX 197	C. Spurrier e-mail to D. Hopkins re: Winstar
1440	11/30/2000	PX 198	C. Spurrier e-mail to D. Hopkins and B. Verwaayen re: Winstar
1441	12/28/2000	PX 199	M. Montemarano e-mail to C. McGovern and C. Carroll re: Winstar
1442	11/2/2000	PX 200	M. Hund-Mejean e-mail to D. Hopkins re: Winstar
1443	1/29/2001	PX 201	E. Perricone e-mail to D. Hopkins and B. Verwaayen re: Winstar Due Diligence
1444	12/6/2000	PX 202	D. Hopkins e-mail to C. Spurrier re: Winstar
1445		PX 203	P. Derrick e-mail to D. Hopkins re: follow up (response to 12/27/00 e-mail)
1446	1/29/2001	PX 204	M. Montemarano e-mail to P. Derrick, G. Caviness and D. Hopkins re: Winstar
1447	9/15/2000	PX 205	Email from L. Rogers to Distribution list re Winstar update
1448	11/21/2000	PX 206	Lucent Technologies Audit Plan Revenue Recognition
1449	5/26/2001	PX 207	Email from D. Hopkins to R. McGinn re discussion with B. Rouhana
1450	8/20/2000	PX 208	D. Hopkins e-mail to W. Viqueira, N. Aversano, P. Derrick and G. Harris re: Winstar
1451	8/28/2000	PX 209	M. McGuinn e-mail to B. Ball re: Winstar briefing
1452	8/8/2000	PX 210	Anonymous letter to D. Hopkins re: fabricated revenue
1453	3/29/2001	PX 211	J. Diroma e-mail to W. Fullerton re: Winstar Services Pass thru
1454	6/27/2000	PX 212	T. Loner e-mail to J. Diroma re: \$60M Winstar funds Transfer for this last quarter
1455	9/30/2000	PX 213	PwC working paper re: Lucent-Service Provider Network
1456	12/20/2000	PX 214	H. Schacht and D. Hopkins letter to PwC re: Lucent audits
1457	10/26/2000	PX 215	Messages from D. Hopkins and D. Sabeh
1458	12/14/2000	PX 216	J. Carter e-mail to C. Carroll, J. Diroma, C. Spurrier and M. Hund-Mejean re: Winstar Agreements
1459	12/28/2000	PX 217	D. Hopkins e-mail to M. Hund-Mejean, D. Harris and M. Montemarano re: Winstar
1460	9/1/2000	PX 218	V. Heron e-mail to D. Harris re: Winstar Update
1461	10/11/2000	PX 219	J. Diroma e-mail to D. Harris, V. Petrini and R. Helfrich re: Winstar ONG Bill and Hold
1462	12/7/2000	PX 220	M. Hund-Mejean e-mail to D. Hopkins re: Winstar Repayment
1463	6/16/2000	PX 221	Presentation re: Customer Finance Strategy

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1464	8/8/2000	PX 222	Anonymous letter to D. Hopkins re: fabricated revenue w/ handwritten notes from C. Watson and D. Hopkins
1465	9/24/2000	PX 223	N. Kantor e-mail to N. Aversano re: Winstar Services Purchase Order.
1466		PX 224	DX 577
1467		PX 225	Summary General Terms and Conditions - Lucent Vendor Finance Facility to WVF-LLC.
1468	5/2/2000	PX 226	E. Perricone and J. Kersten memo to P. Sperling, J. Orlando and B. Viqueira re: \$2 Billion Facility for Winstar.
1469	9/22/2000	PX 227	Notice of Request for Borrowing.
1470	1/8/2001	PX 228	C. Spurrier e-mail to D. Harris re: disbursements to Winstar.
1471	12/28/2000	PX 229	E. Perricone e-mail to P. Derrick, M. Montemarano, D. Harris, et al. re: Winstar-Financing of Services under Credit Agreement dated May 4, 2000.
1472	11/1/2000	PX 230	E. Perricone e-mail to F. Izzo, L. Rogers and M. Keefe re: Winstar memo.
1473	11/2/2000	PX 231	E. Perricone e-mail to P. Derrick re: Winstar Implications of Refinance Notice.
1474	12/10/2000	PX 232	M. Hund-Mejean e-mail to E. Perricone re: Winstar Repayment.
1475	1/3/2001	PX 233	E. Perricone e-mail to P. Derrick, M. Keefe and W. Keller re: Potential Winstar Re-negotiations.
1476	5/4/2000	PX 234	Amendment No. 2 and New Lender Agreement
1477	4/5/2000	PX 235	N. Holcomb e-mail to A. Zendle and P. Soltesz re: Siemens Accelerated Proposal
1478	11/6/2000	PX 236	DELETED
1479	3/23/2001	PX 237	Chart of 3Q 1999 Estimated Lucent Billing.
1480	5/5/2001	PX 238	Chart of 4th Quarter 1999 Actual Lucent Billing.
1481	5/6/2001	PX 239	Winstar Communications - Lucent Billing for Capital Labor 1Q Actual.
1482	10/13/2000	PX 240	Winstar Communications - Lucent Billing for Capital Labor Q3 2000i Actual.
1483	5/9/2001	PX 241	Winstar Communications - Lucent Billing for Capital Labor Q4 2000i Estimate.
1484	12/27/2000	PX 242	J. Dornan e-mail to G. Simpson and M. Carney re: 4Q Lucent Labor Bill Estimate.
1485	12/28/2000	PX 243	R. Uhl fax to M. Montemarano re: analysis of Winstar's 4Q 2000 Capital Labor.
1486	4/2/2001	PX 244	G. Simpson e-mail to D. Nidowicz re Q1 2001 Financable Labor.
1487	4/2/2001	PX 245	D. Nidowicz fax to G. Caviness re: Lucent Billing for Capital Labor Q1 2001 Estimate.
1488	3/27/2001	PX 246	Notice of Request of Borrowing.
1489	9/21/1999	PX 247	Statement and Invoice to Lucent for \$37,075,925.
1490	1/21/2000	PX 248	Statement and invoice to Lucent in the amount of \$38,758,042.
1491	5/5/2000	PX 249	Statement and invoice to Lucent in the amount of \$55,485,175.
1492	10/1/2000	PX 250	Statement and invoice to Lucent in the amount of \$67,291,934.
1493	11/29/2000	PX 251	P. Derrick e-mail to M. Hund-Mejean, J. Bisson, M. Montemarano, et al. re: Winstar Negotiations.
1494	12/7/2000	PX 252	M. Hund-Mejean e-mail to M. Montemarano and C. spurrier re: Winstar Repayment.
1495	10/30/2000	PX 253	M. Montemarano e-mail to D. Harris re: Winstar Services Proposal.
1496	12/14/2000	PX 254	J. Carter e-mail to C. Carroll, J. Diroma, C. Spurrier, et al. re: Winstar Agreements.
1497	2/9/2001	PX 255	Winstar- Lucent Meeting Agenda
1498	12/29/2000	PX 256	Notice of Request for Borrowing.
1499	11/7/2000	PX 257	P. Derrick e-mail to M. Hund-Mejean re: draft Winstar Agreement.
1500	11/13/2000	PX 258	M. Montemarano e-mail to G. Vashist, F. Izzo, W. Keller, et al. re: Winstar Gameplan over next few days.
1501	11/2/2000	PX 259	Credit Review Worksheet prepared by J. Alter for WVF-I, LLC.

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1502	12/29/2000	PX 260	P. Derrick e-mail to M. Montemarano re: payments to Winstar.
1503	12/29/2000	PX 261	B. Verwaayen e-mail to C. Spurrier, M. Montemarano re: Winstar Renegotiations.
1504	1/2/2001	PX 262	Potential Amended Financing Parameters.
1505	1/14/2001	PX 263	D. Hopkins e-mail re: M. White re: winstar meeting montemarano notes
1506	2/12/2001	PX 264	R. Uhl letter to M. Montemarano (cc: C. Spurrier, D. Harris, B. Verwaayen and N. Kantor) re: Lucent's position on funding for non-Lucent performed services.
1507	11/6/2000	PX 265	W. Fullerton e-mail to M. Montemarano re: winstar services
1508	3/29/2001	PX 266	J. Diroma e-mail to W. Fullerton re: winstar services pass thru
1509	1/20/2000	PX 267	J. Cocito e-mail to J. Diroma re: winstar services
1510	11/7/2000	PX 268	C. Kelly e-mail to W. Fullerton re: Winstar Services
1511	11/10/2000	PX 269	J. Diroma e-mail to M. Montemarano re: winstar services addendum - restricted internal review and comment
1512	11/29/2000	PX 270	W. Fullerton e-mail to C. Kelly and J. Diroma re: Immediate attention requested Winstar Services
1513	12/6/2000	PX 271	W. Fullerton e-mail to M. Montemarano; D. Hopkins and M. White re: winstar Agreement
1514	1/15/2001	PX 272	Discussion re: Winstar refinancing.
1515	1/2/2001	PX 273	Notes re: Potential Amended Financing Parameters.
1516	1/8/2001	PX 274	D. Harris e-mail to C. spurrier, B. Verwaayen, M. Montemarano re: Agenda for meeting with Winstar.
1517	2/6/2001	PX 275	C. McGovern e-mail to C. Spurrier, B. Verwaayen, D. Harris attaching letter to sent to R. Uhl on 2/6/01.
1518	2/12/2001	PX 276	R. Uhl letter to M. Montemarano (cc: C. Spurrier, D. Harris, B. Verwaayen and N. Kantor) re: Lucent's position on funding of non-Lucent performed services.
1519	2/2/2001	PX 277	B. Verwaayen e-mail to M. Montemarano, C. Spurrier and D. Harris re: Update to Winstar 'strategy'.
1520	3/21/2001	PX 278	E. Perricone e-mail to P. Derrick and M. Hund Mejean re: Winstar conversion notes.
1521	3/21/2001	PX 279	M. Montemarano e-mail to D. Harris, D. Hopkins, M. Hund-Mejean, et al re: 3/21/01 Winstar meeting.
1522	4/17/2001	PX 280	Affidavit of Richard Uhl.
1523	9/29/2000	PX 281	R. Uhl to D. Ackerman, F. Jules, N. Kantor, J. Maloney, F. Rubin and B. Zlotnick re: Lucent acceptance of Winstar service charges.
1524	2/7/2001	PX 282	DELETED
1525	3/30/2001	PX 283	DELETED
1526	2/25/2001	PX 284	F. Jules e-mail to R. Uhl re: L'O'Brien Cash Forecast.
1527	11/10/2000	PX 285	H. Shartel e-mail to F. Rubin and R. Uhl re: Savings Recommendations.
1528	10/20/2000	PX 286	H. Shartel e-mail to F. Jules re: Winstar actions.
1529	12/29/2000	PX 287	DELETED
1530	6/26/2000	PX 288	D. Ackerman e-mail to N. Kantor re: End of quarter deals with Lucent & Winstar
1531	10/12/2000	PX 289	D. Ackerman e-mail to F. Jules and R. Uhl re: Change in Plan on 2000 CapEx Budget
1532	8/27/2000	PX 290	D. Harris e-mail to N. Aversano re: winstar briefing
1533	12/11/2000	PX 291	Complaint; jury demand; certification to nj rule 4:5-1
1534	10/20/2000	PX 292	E. Perricone e-mail to D. Harris re: Winstar refinance notice
1535	9/6/2000	PX 293	DELETED
1536	9/20/1999	PX 294	J. Quinn e-mail to J. Diroma re: winstar services
1537	6/27/2000	PX 295	T. Loner e-mail to J. Diroma re: 60M winstar funds transfer for this last quarter
1538	3/30/2000	PX 296	Notes re: winstar pass-thru arrangement

EXHIBIT A

**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

1539	2/27/2000	PX 297	J. Cocito e-mail to J. Diroma re: Kanan Vocall revenue issues
1540	9/14/1999	PX 298	J. Diroma e-mail to A. Borthoumias; D. Christian etc. re: End of quarter revenue recognition
1541	12/20/1999	PX 299	R. Halrich e-mail to C. Asalimopotles re: winstar 4000 orders call on Monday
1542	3/21/2000	PX 300	E. Di Pietro e-mail to J. Diroma re: bill and hold
1543	12/28/2000	PX 301	D. Hopkins e-mail to M. Hund-Mejean; D. Harris; M. Montemarano re: winstar
1544	8/17/2000	PX 302	V. Petrini e-mail to D. Harris re: A1-Suspension of CS Services
1545	12/14/2000	PX 303	R. Mark e-mail to S. Rosen; D. Hsu; A. Saiewitz etc. re: winstar Agreements
1546	3/1/2004	PX 304	Response to Lucent's Objections to Plaintiff's Deposition Upon Written Questions of Deborah Harris
1547	11/19/2000	PX 305	M. Hund-Mejean e-mail to D. Harris re: Winstar
1548	12/8/2000	PX 306	R. Helfrich e-mail to R. Kipke and J. Diroma re: Winstar Bill and Hold IMMEDIATE ATTENTION NEEDED
1549	12/8/2000	PX 307	R. Kipke e-mail to R. Helfrich and J. Diroma re: Winstar bill and Hold IMMEDIATE ATTENTION NEEDED
1550	12/28/2000	PX 308	E. Perricone e-mail to P. Derrick et al re: Winstar-Financing of Services under Credit Agreement dated May 4, 2000
1551	1/26/2001	PX 309	Winstar/Lucent Meeting
1552	12/8/2000	PX 310	D. Ackerman e-mail to J. EEverding re: Services Addendum
1553	11/2/2000	PX 311	M. Hund-Mejean e-mail to D. Hopkins re: Winstar
1554	12/26/2000	PX 312	H. Shartel e-mail to F. Rubin re: Net 90.
1555	12/19/2000	PX 313	E. Perricone letter to Winstar Communications, Inc. re: Lucent Credit Facility.
1556	9/20/1999	PX 314	J. Quinn e-mail to J. Diroma re: Winstar Services.
1557	2/1/2001	PX 315	D. Harris e-mail to M. Montemarano and E. Perricone re: Winstar draw.
1558	2/6/2001	PX 316	M. Montemarano e-mail to K. Becker and P. Derrick re: 2/5/01 approval for Winstar loan advance.
1559	7/24/2000	PX 317	J. Diroma e-mail to J. Cocito, C. Naylor, E. Perricone, et al. re: Winstar Services.
1560	11/16/2000	PX 318	M. Hund-Mejean e-mail to P. Hayes re: sending notice to Winstar.
1561	6/12/1998	PX 319	Invoice from Winstar to Lucent in the amount of \$25,000,000.
1562	10/26/2000	PX 320	B. Nelson fax to D. Harris re: Lucent Product Overview from N. Kantor.
1563	12/21/2000	PX 321	Lucent Technologies reports results of operational and financial review.
1564	12/5/2000	PX 322	P. Derrick e-mail to M. Hund-Mejean re: Winstar due diligence.
1565	9/29/2000	PX 323	Software Pool Agreement.
1566	10/20/2000	PX 324	\$135M Software Pool Allocations Fiscal Q42000 EoQ Deal.
1567	11/16/2000	PX 325	J. Diroma e-mail to R. Moogan re: Winstar Special Services Arrangement.
1568	10/19/2000	PX 326	Lucent/Winstar End of Quarter Deal Fiscal Year Q42000.
1569	3/26/2001	PX 327	DELETED
1570	12/19/2001	PX 328	Deloitte and Touche Valuation Consulting Services Report
1571	12/19/2001	PX 329	Empire Valuation Consultants Report
1572	9/29/2000	PX 330	N. Aversano e-mail to D. Harris, W. Plunkett, and J. Cocito re: Lucent Credit.
1573	10/22/1998	PX 331	\$2 Billion Winstar/Lucent strategic Agreement to expand Winstar's broadband network
1574	10/23/2000	PX 332	Lucent's Board of Directors names Henry Schacht Chairman and CEO
1575	2/27/2003	PX 333	Lucent Technologies reaches agree to resolve Agreement in principle with SEC staff all matters under investigation
1576	3/17/2004	PX 334	Lucent Technologies to make payment as part of SEC settlement
1577	12/19/2001	PX 335	IDT Corp form 8-K with schedule filed December 19, 2001 with SEC
1578	8/28/2002	PX 336	IDT Corp form 8-KA with schedules filed August 28, 2002 with SEC
1579	11/7/2000	PX 337	P. Derrick e-mail to M. Hund-Mejean re: drafting of Winstar Agreement.
1580	11/2/2000	PX 338	J. Diroma fax to M. Montemarano re: Winstar financing issues.
1581	11/7/2000	PX 339	P. Hayes e-mail to P. Derrick re: Winstar Recourse Removal.
1582	10/4/2001	PX 340	Secured Proof of Claim for \$138,957,218.90.

EXHIBIT A

**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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1583	10/11/2001	PX 341	Unsecured Proof of Claim
1584	10/11/2001	PX 342	Secured Proof of Claim.
1585	3/28/2003	PX 343	Proof of Claim regarding Rejection Damages
1586	4/2/2001	PX 344	Invoices NWC0004071, NWC0004076-NWC0004077, NWC0004084-NWC0004087, NWC004098, NWC0004621, NWC0004630, NWC0004766
1587		PX 345	2Q00 EOQ Deal Summary.
1588	7/1/2000	PX 346	V. Petrini e-mail to W. Plunkett re: revised 3Q00 deal.
1589	7/6/1999	PX 347	Lucent invoice to Winstar in the amount of \$11,794,770.00.
1590	6/26/2000	PX 348	C. Naylor e-mail to V. Petrini and W. Plunkett re: EoQ Deal.
1591	9/22/2000	PX 349	R. Helfrich e-mail to P. Perry, A. Fulton, M. Riesa, et al. re: Software Pool.
1592		PX 350	Fiscal Q3 2000 EoQ Deal.
1593		PX 351	Lucent/Winstar End of Quarter Deals Fiscal Year 2000.
1594	11/22/1999	PX 352	D. Digirolomo e-mail to F. Manzi re: Winstar Yr. 2000 Spend Meeting.
1595	12/30/1999	PX 353	M. Wilson letter to D. Ackerman re: \$3,000,000 Lucent credit to Winstar.
1596	2/6/2000	PX 354	J. Noda e-mail to S. Cassidy and F. Manzi re: Winstar 4Q99 Funds Transfer PO.
1597	3/30/2000	PX 355	M. Wilson fax to D. Ackerman re: \$3,000,000 Lucent credit to Winstar.
1598	3/31/2000	PX 356	A. Zendle letter to C. Naylor re: shipment of optical networking equipment.
1599	3/31/2000	PX 357	M. Wilson letter to D. Ackerman re: \$3,000,000 Lucent credit to Winstar.
1600	4/27/2000	PX 358	S. Colross e-mail to J. Cocito re: Lucent's Purchase Money debt.
1601	5/4/2000	PX 359	Winstar Outstanding New Facility.
1602	6/23/2000	PX 360	D. Ackerman e-mail to N. Kantor re: Lucent cash.
1603	6/30/2000	PX 361	W. Plunkett letter to D. Ackerman re: \$14,000,000 Lucent credit to Winstar.
1604	6/30/2000	PX 362	L. Hicks e-mail to V. Petrini re: shipment of optical networking equipment.
1605	6/30/2000	PX 363	W. Plunkett letter to D. Ackerman re: \$14,000,000 Lucent credit to Winstar.
1606	9/1/2000	PX 364	D. Harris e-mail to L. Rogers re: Winstar Update.
1607	9/14/2000	PX 365	Lucent/Winstar End of Quarter Deals Fiscal Year 2000.
1608	9/25/2000	PX 366	J. Cocito e-mail to F. Manzi re: Winstar Services.
1609	9/25/2000	PX 367	A. Dollins e-mail D. Harris attaching Winstar Issue Status chart.
1610	9/28/2000	PX 368	DELETED
1611	9/29/2000	PX 369	D. Harris e-mail to D. Ackerman re: \$10,000,000 00 Lucent PX credit to Winstar.
1612	9/29/2000	PX 370	B. Zlotnick letter to V. Petrini re: Bill and Hold Letter for Lucent Optical Equipment.
1613	9/29/2000	PX 371	N. Aversano e-mail to D. Harris, W. Plunkett, J. Cocito re: Lucent Credit.
1614	10/6/2000	PX 372	B. Plunkett letter to D. Ackerman re: equipment and services commitment
1615	10/16/2000	PX 373	B. Plunkett letter to D. Ackerman re: deferred billing
1616	10/20/2000	PX 374	B. Plunkett letter to D. Ackerman re: \$35M credit
1617	10/20/2000	PX 375	B. Plunkett letter to D. Ackerman re: pricing and commitments
1618	12/7/2000	PX 376	E. Perricone e-mail to F. Rubin re: Prepayment 12/7/00
1619	12/14/2000	PX 377	F. Jules e-mail to D. Ackerman re: Lucent
1620	3/29/2001	PX 378	DELETED
1621	5/8/2001	PX 379	DELETED
1622	9/28/2000	PX 380	Winstar/Lucent 2000 Partnership Deal
1623	6/28/2000	PX 381	L. Hicks e-mail to D. Ackerman re: EOQ deal
1624	10/22/1998	PX 382	Winstar Conference Call transcript
1625	7/14/1999	PX 383	N. Kantor e-mail to C. Dickson, F. Rubin and J. Dwyer re: Response to Your Request
1626	4/5/2001	PX 384	DELETED
1627	4/10/2001	PX 385	DELETED
1628	6/28/2001	PX 386	DELETED
1629	6/29/2001	PX 387	DELETED
1630	4/22/1999	PX 388	J. Dirome e-mail to W. Plunkett re: winstar services
1631	1/4/2000	PX 389	A. Carrone e-mail to M. Lester, A. Jerden, R. Lepore, etc.. re: winstar

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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1632	1/18/2000	PX 390	J. Diroma e-mail to C. Naylor; M. Wilson; M. Epstein etc.. re: winstar services
1633	1/20/2000	PX 391	J. Cocito e-mail to J. Diroma re: winstar services
1634	2/14/2000	PX 392	C. Naylor e-mail to J. Diroma; J. Cocito and D. Rigoth re: update 2 FW winstar services
1635	11/9/2000	PX 393	J. Diroma e-mail to V. Patrini; D. Rigotti and A. Fulton re: Winstar services opportunity
1636	12/21/1999	PX 394	Winstar purchase order
1637	12/30/1999	PX 395	A. Zardla letter to C. Naylor re: Engineering
1638	3/28/2000	PX 396	C. Naylor e-mail to V. Petrini re: winstar bill and hold
1639	12/8/2000	PX 397	J. Diroma e-mail to D. Rigotti re: winstar issues
1640	1/3/2001	PX 398	J. Diroma e-mail to M. Weinman and K. O'Grady re: March Inventory JE for Winstar
1641		PX 399	Lucent plan for policy change regarding "pass through winstar services"
1642	9/30/2000	PX 400	Notes re: Winstar pass-thru Agreement
1643	12/10/1999	PX 401	C. Naylor e-mail to V. Petrini re: Response to your letter of this afternoon
1644		PX 402	DELETED
1645	2/8/2001	PX 403	M. Montemarano e-mail to C. McGovern re: Winstar Storyboard (sent on behalf of Debbie Harris)
1646	3/20/2001	PX 404	D. Harris e-mail to L. Alexander re: Equipment in Lucent Warehouse
1647	4/12/2001	PX 405	E. Perricone memorandum to D. Hopkins re: Winstar
1648	9/6/2000	PX 406	L. Rogers memorandum to D. Hopkins, N. Aversano and P. Derrick re: Barron's September 4, 2000 article and Reuters September 5, 2000 commentary.
1649	11/10/2000	PX 407	DELETED
1650	11/10/2000	PX 408	DELETED
1651	4/9/2001	PX 409	DELETED
1652	4/11/2001	PX 410	DELETED
1653	10/20/1998	PX 411	S. Bryant e-mail to M. Gelsi re: Board Meeting Slides.
1654	5/14/2002	PX 412	Deposition testimony of Richard McGinn from Aversano v. Lucent.
1655	5/14/2002	PX 413	DELETED
1656	5/4/2000	PX 414	DELETED
1657	12/4/2000	PX 415	E. Perricone e-mail to F. Rubin, K. Monaco and R. Uhl re: Winstar Due Diligence.
1658	12/8/2000	PX 416	K. Monaco letter to W. Keller enclosing materials requested by E. Perricone in her 12/4/00 e-mail message.
1659	12/8/2000	PX 417	K. Monaco e-mail to F. Rubin re: Winstar due diligence questions.
1660	10/19/2000	PX 418	E. Perricone e-mail to P. Derrick re: WVF-I LLC Refinancing Requirement.
1661	12/18/2000	PX 419	M. Hund-Mejean e-mail to E. Perricone, M. Keefe, R. Mark et al. re: Winstar-Request for Credit Memo to reduce Lucent Loans below \$500M.
1662	12/19/2000	PX 420	D. Hopkins e-mail to D. Harris, C. Spurrier and M. Hund-Mejean re: Winstar refinancing notice.
1663	12/28/2000	PX 421	M. Hund-Mejean e-mail to D. Harris re: Winstar Refinancing Notice.
1664		PX 422	Lucent/Winstar "Want" List
1665	3/7/2001	PX 423	DELETED
1666	3/16/2001	PX 424	DELETED
1667	5/17/2001	PX 425	DELETED
1668	1/3/2001	PX 426	A. Alfred e-mail to E. Perricone and K. Becker re: 2nd borrowing request from Winstar.
1669	1/4/2001	PX 427	D. Harris e-mail to A. Dollins re: call to discuss Winstar services turnkey proposal.
1670	3/21/2001	PX 428	Winstar/Lucent Meeting - Finance Matters.
1671	3/28/2001	PX 429	DELETED
1672	4/12/2001	PX 430	DELETED
1673	7/9/2001	PX 431	DELETED

EXHIBIT A

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BE INCLUDED IN THE RECORD ON APPEAL

1719	11/16/2000	PX 477	P Derrick e-mail to D Harris, R Mark, M. Montemarano, et al. re: draft letter to Fred Rubin.
1720	3/27/2001	PX 478	Notice of Request for Borrowing.
1721	3/12/2004	PX 479	Defendant's Amended and Supplemental Responses and Objections to Plaintiff's Third Set of Interrogatories.
1722	6/11/2004	PX 480	Declaration of Vernon Terrell in Support of Motion of Defendant Lucent Technologies Inc. For Summary Judgment with Accompanying Exhibits.
1723	4/19/2004	PX 481	Defendant's Additional Supplemental Response to Interrogatory No. 1 of Plaintiff's Third Set of Interrogatories.
1724	3/12/2001	PX 482	DELETED
1725	3/7/2001	PX 483	DELETED
1726	3/29/2000	PX 484	DELETED
1727	3/30/2000	PX 485	DELETED
1728	3/9/1999	PX 486	R. Haffar e-mail to N. Kantor re: Update re meeting with Nina Aversano.
1729	3/27/1999	PX 487	R. Haffar e-mail to N. Kantor re: Lucent update: no action necessary.
1730	7/26/2000	PX 488	DELETED
1731	8/5/1999	PX 489	DELETED
1732	12/17/1999	PX 490	D Ackerman e-mail to M. Wilson re: Phone System for ICI will not be deployed by Lucent.
1733	6/30/2000	PX 491	D. Ackerman e-mail to L. Hicks re: Software Pool Agreement.
1734	11/16/2000	PX 492	DELETED
1735	12/20/2000	PX 493	DELETED
1736	3/17/2001	PX 494	DELETED
1737	6/27/2000	PX 495	DELETED
1738		PX 496	DX 141
1739		PX 497	DELETED
1740		PX 498	DX 328
1741		PX 499	DX 354
1742		PX 500	DX 442
1743		PX 501	DX 575
1744	12/31/1999	PX 502	DX-211- Winstar 12/31/99 10-K
1745	9/30/2000	PX 503	DX 429 - Winstar 9/30/99 10Q
1746	12/27/2000	PX 504	Lucent 10-K
1747	12/19/2001	PX 505	Order Authorizing Sale of Certain of Debtors' Assets Free & Clear of Liens....
1748	4/9/2003	PX 506	Stipulation and Approved Order Resolving Motion of Secured Creditor Lucent Technologies Inc. for Relief from Automatic Stay
1749	11/12/2003	PX 507	Order Approving Settlement with Lucent Technologies Inc Pursuant to Fed. R. Bankr. P. 9019
1750	11/4/2004	PX 508	Order Approving Settlement with Lucent Technologies Inc PX Pursuant to Fed. R. Bankr. P. 9019
1751	1/4/2001	PX 509	Email from D. Rigotti to V. Petrimi and J. Newsom re Restructuring Structure

In re Winstar Communications, Inc. et al.
Bankruptcy Case #01-01430-JBR

Tab	Date	Bankr. Docket No.	Description of Item
1752	04/18/2001	1	VOLUNTARY Petition Under Chapter 11 with Exhibit A, List of Creditors Holding 20 Largest Unsecured Claims, Declaration and Certificate of Resolutions

EXHIBIT A

APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL

1865	10/10/2001	1156	Monthly Operating Report for Filing Period September 28, 2001. Filed by James R. O'Donnell, VP Corporate Planning. WINSTAR COMMUNICATIONS, INC.
1866	10/11/2001	1199	Response /Objection To Stipulation And Agreed Order Resolving Motion Of Secured Creditor Lucent Technologies Inc. For Relief Fro Automatic Stay Or, Alternatively, Adequate Protection With Respect To Certain Investment And Disbursement Accounts (Donna L. Harris, Esq./PRE-PETITION AGENTS) (Certificate of Service Attached). Filed by WINSTAR COMMUNICATIONS, INC. (related document(s)1105).
1867	11/07/2001	1291	Motion to Allow DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 363(b), 363(f) AND 363(m) (i) APPROVING ASSET PURCHASE AGREEMENT, (ii) AUTHORIZING SALE OF ASSETS OF WINSTAR-ICI DIVISION FREE AND CLEAR OF LIENS, INTERESTS, CLAIMS AND ENCUMBRANCES, AND (iii) GRANTING RELATED RELIEF Filed by WINSTAR COMMUNICATIONS, INC.
1868	11/13/2001	1413	Notice of Filing of Declaration of Edward Sichler in Support of Motion of Siemens Carrier Networks LLC for Entry of Orders Granting Relief From the Automatic Stay and Deeming Contracts Rejected RE: 1313 and 1314 (FILED UNDER SEAL) Filed by Edward Sichler (JML,) Additional attachment(s) added on 12/4/2001
1869	11/21/2001	1345	Motion to Approve BIDDING PROCEDURES, INCLUDING BID PROTECTIONS, (ii) APPROVING THE FORM AND MANNER OF NOTICE OF (a) BID PROCEDURES HEARING (b) SALE HEARING (c) CURE AMOUNT NOTICES AND (d) ASSUMPTION NOTICES AND (iii) SCHEDULING SALE HEARING, AND (B) AUTHORIZING AND APPROVING (i) SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND (ii) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES Filed by WINSTAR COMMUNICATIONS, INC. Hearing scheduled for 11/27/2001 at 12:45 PM (check with court for location). Objections due by 12/7/2001 (Attachments: # 1 Notice # 2 Exhibit A# 3 Exhibit B# 4 Exhibit C# 5 Exhibit D# 6 Exhibit E# 7 Exhibit F# 8 Proposed Form of Order # 9 Affidavit and Service List) (Morgan, Pauline) (Entered: 11/21/2001)
1870	11/27/2001	1386	Order (i) Approving Asset Purchase Agreement, (ii) Authorizing Sale of Assets of WINSTAR-ICI Division Free & Clear of Liens, Interests, Claims & Encumbrances & (iii) Granting Related Relief signed on 11/27/2001 (related document(s)1291).
1871	11/27/2001	1388	Order (i) Approving Bidding Procedures, (ii) Approving Form & Manner of Notice of (A) Bid Procedures Hearing , (B) Sale Hearing (C) Cure Amount Notices, & (D) Assumption Notices & (iii) Scheduling Sale Hearing signed on 11/27/2001 (related document(s)1345).
1872	11/29/2001	1399	Notice of Filing Exhibit A to Order Pursuant to 11 U S C Sections 363(b) and 105(a) and Fed R Bankr. P. 2002, 6004, 6006 and 9014 (i) Approving Bidding Procedures, (ii) Approving the Form and Manner of Notice of (A) Bid Procedures Hearing (B) Sale Hearing (C) Cure Amount Notices, and (D) Assumption Notices and (iii) Scheduling Sale Hearing (RE: Docket No. 1388) Filed by WINSTAR COMMUNICATIONS, INC.
1873	12/04/2001	1426	Motion to Allow Motion for Order Pursuant to Bankruptcy Code Sections 363(b), 363(f), 363(m) and 365(i) Approving Asset Purchase Agreement Between Winstar Wireless, Inc and Fastmetrics, LLC, (ii) Authorizing Sale of ISPNetworks Division Free and Clear of Liens, Interests, Claims and Encumbrances, (iii) Authorizing Winstar Wireless, Inc to Assume and Assign Certain Executory Contracts and Unexpired Leases and (iv) Granting Related Relief Filed by WINSTAR COMMUNICATIONS, INC.

EXHIBIT A

**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

1874	11/21/2001	1574	Monthly Operating Report for Filing Period September 30, 2001 Filed by WINSTAR COMMUNICATIONS, INC.
1875	12/18/2001	1619	Motion to Approve the Asset Purchase Agreement, (ii) Authorizing Sale of Assets to Corporate Telecommunications Group Free and Clear of Liens, iNterests, Claims and Encumbrances and (iii) Granting Related Relief Filed by WINSTAR COMMUNICATIONS, INC.
1876	12/19/2001	1620	Notice of Filing Supplement to Motion for Order Authorizing (i) Sale of Certain of the Debtors' Assets Free and Claer of Liens, Claims, Encumbrances, and Interests and (ii) Authorizing the Assumption and Assignment of Certain Executory Contracts and unexpired Leases, Seeking Additional Relief of Entry of an Order (A) Authorizing the Debtors to Enter into and Approving Management Agreement, (B) Approving Regulatory Transistion Process and (C) Granting Related Relief Filed by WINSTAR COMMUNICATIONS, INC.
1877	12/19/2001	1627	Order Authorizing (i) Sale of Certain of Debtors' Assets Free & Clear of Liens, Claims Encumbrances, & Interests, (ii) Approving Cure Amounts w/Respect to Certain Executory Contracts & Unexpired Leases, (iii) Approving Debtors' to Enter Into & Approving Management Agreement, (iv) Approving Regulatory Transition Process & (v) Granting Related Relief signed on 12/19/2001.
1878	12/19/2001	1629	Notice of Filing Master Final, Execution Copy/ASSET PURCHASE AGREEMENT Among IDT WINSTAR ACQUISITION, INC, WINSTAR COMMUNICATION, INC. & CERTAIN of its Subsidiaries Filed by WINSTAR COMMUNICATIONS, INC. (related document(s)1627).
1879	12/20/2001	1652	Notice of Filing Re-Notice to Motion for Order Pursuant to Bankruptcy Code Sections 363(b), 363(f), 363(m)(i) Approving the Asset Purchase Agreement, (ii) Authorizing Sale of Assets to Corporate Telecommunications Group Free and Clear of Liens, Interests, Claims and Encumbrances and (iii) Granting Related Relief Filed by WINSTAR COMMUNICATIONS, INC.
1880	12/20/2001	1655	Notice of Filing of Letter Regarding Sale and Auction of Assets Filed by Multnomah County Oregon Department of Support Services.
1881	01/04/2002	1804	Order Approving Asset Purchase Agreement Between Winstar Wireless, Inc & Corporate Telecommunications Group, Inc , et al (BLACKLINED COPY) (related document(s)1619).
1882	01/04/2002	1805	Order Approving Asset Purchase Agreement Between Winstar Wireless, Inc. & Corporate Telecommunications Group, Inc , (B) Authorizing Sale of The Northwest Nexus Divison Free & Clear of Liens, Interests, Claims & Encumbrances & (C) Granting Related Relief signed on 1/4/2002 (related document(s)1619).
1883	01/17/2002	1879	Order (A) Approving Asset Purchase Agreement Between Winstar Wireless, Inc and Fastmetrics, LLC, (B) Authorizing Sale of Ispnetworks Division Free and Clear of Liens, Interests, Claims and Encumbrances, (C) Authorizing Winstar Wireless, Inc to Assume and Assign Certain Executory Contracts and Unexpired Leases and (D) Granting Related Relief (Related Doc # 1426).
1884	01/24/2002	1909	Motion to Convert Case 11 to Chapter 7 Reaffirming Terms and Conditions of Asset Sale order Dated December 19, 2001, Shortening Time for, and Approving the Manner of Notice of Meeting of Creditors Under Bankruptcy Code Section 341 and Granting Related Relief. Receipt Number 57550, Fee Amount \$15 Filed by WINSTAR COMMUNICATIONS, INC.
1885	01/24/2002	1919	Order signed on 1/24/2002 Converting Case To Chapter 7, Reaffirming Regulatory Transition Process Under Asset Sale Order Dated 12/19/01, Shortening Time For & Approving The Manner Of Notice Of Meeting Of Creditors Under Bankruptcy Code Section 341 & Granting Related Relief (related document(s)1909).
1886	02/13/2002	1965	Motion to Sell Free and Clear of Liens Filed by Christine Shubert.

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1887	02/13/2002	1966	Complaint For Declaratory Relief by Winstar Holdings, LLC, as successor in interest to Winstar Communications, Inc. against BNY CAPITAL RESOURCES CORPORATION.
1888	02/15/2002	1979	Motion to Sell Free and Clear of Liens and Encumbrances and for an Order Approving the Sale of Assets to Dun & Bradstreet, Inc. Filed by Christine Shubert.
1889	02/14/2002	1987	Order 1) Authorizing Trustee to Enter into Software License Agreement; 2) Authorizing and Scheduling a Public Auction; 3) Approving Break-up Fee; 4) Setting Bidding Deadline, Auction Date and Bidding Procedures, Including Deposit Requirements and Objection Deadline to Bidding Procedures; 5) Setting Hearing Date and Objection Deadline for Approval of the Sale of the Assets of the Debtors Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. Section 363, and 6) Approving the Form of Notice of Motion for Approval of the Sale. Order signed on 2/14/2002 (related document(s)1965).
1890	03/03/2002	2025	Exhibit A - Part 1 of Asset Purchase Agreement Filed by Christine Shubert (related document(s)1979).
1891	03/07/2002	2064	Order signed on 3/7/2002 Approving Sale Of The Assets Of The Debtors Free & Clear Of Liens, Claims & Encumbrances (related document(s)1979).
1892	03/28/2002	2086	Motion to Approve the Unit Purchase Agreement and (ii) Authorizing the Sale of Certain Common Units of Winstar Holdings, LLC to DipChip, Inc. Free and Clear of Liens, Pursuant to 11 U.S.C. Section 105(a) and 363(b)(1) Filed by Christine Schubert (related document(s)2085).
1893	04/11/2002	2144	Order signed on 4/11/2002 Approving The Unit Purchase Agreement & Authorizing The Sale Of Certain Common Units Of Winstar Holdings LLC To Dipchip Inc Free & Clear Of Liens (relates to document 2086).
1894	05/24/2002	2557	Motion to Approve an Order, Pursuant to 11 U.S.C. Section 105(a) and 363 (b) Expanding the Carve-Out Under the Debtors' Post Petition Credit Agreement Filed by Christine Shubert.
1895	06/11/2002	2629	Order signed on 6/11/2002 Expanding Carve Out Under The Debtors Post-Petition Credit Agreement (related document(s)2557).
1896	06/20/2002	2644	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 for Winstar Communications, Inc.
1897	06/20/2002	2645	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 for Winstar Wireless, Inc.
1898	06/20/2002	2646	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 for Winstar Interactive Media Sales
1899	06/20/2002	2647	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 for Winstar New Media Company, Inc.
1900	06/20/2002	2648	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 for Office.com, Inc.
1901	06/20/2002	2649	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/02 for Winstar Communications, Inc. Filed by Christine Shubert (Menkowitz, Michael) (Entered: 06/20/2002)
1902	06/20/2002	2650	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/02 for Winstar Wireless, Inc.
1903	06/20/2002	2651	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/02 for Winstar Interactive Media Sales
1904	06/20/2002	2652	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/02 for Winstar New Media Company, Inc.
1905	06/20/2002	2653	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/02 for Office.com, Inc.
1906	06/20/2002	2654	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 4/30/02 for Winstar Communications, Inc.

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1907	06/20/2002	2655	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 4/30/02 for Winstar Wireless, Inc.
1908	06/20/2002	2656	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 4/30/02 for Winstar Interactive Media Sales
1909	06/20/2002	2657	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 4/30/02 for Winstar New Media Company, Inc.
1910	06/20/2002	2658	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 4/25/02 for Office.com, Inc.
1911	07/03/2002	2685	Motion to Authorize Asset Purchase Agreement Pursuant to 11 U.S.C. 105 and Federal Rules of Bankruptcy Procedure Rule 6004 and 9014 Filed by Winstar Holdings, L.L.C.
1912	07/22/2002	2734	Order signed on 7/22/2002 Granting Motion Of Winstar Holdings LLC For Enforcement Of Order Authorizing Asset Purchase Agreement .
1913	07/24/2002	2737	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 05/31/02 for Winstar Communications, Inc.
1914	07/24/2002	2739	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 5/31/02 for Winstar Wireless, Inc.
1915	07/24/2002	2740	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 5/31/02 for Winstar New Media Company, Inc.
1916	07/24/2002	2741	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 5/31/02 for Winstar Interactive Media Sales
1917	07/24/2002	2742	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 5/31/02 for Office.com, Inc.
1918	07/26/2002	2750	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 6/30/2002 for Winstar Communications, Inc.
1919	07/26/2002	2751	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 6/30/2002 for Winstar Wireless, Inc.
1920	07/26/2002	2752	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 6/30/2002 for Winstar New Media Company, Inc.
1921	07/26/2002	2753	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 6/30/2002 for Winstar Interactive Media Sales
1922	07/26/2002	2754	Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 6/30/2002 for Office.com, Inc.
1923	07/26/2002	2756	Notice of Filing of Motion and Incorporated Memorandum for Order to Implement and Enforce Provisions of Sale Order Dated December 19, 2001 Filed by Winstar Holdings, LLC.
1924	07/26/2002	2757	Exhibits (Related document(s) 2756) Filed by Winstar Holdings, LLC.
1925	07/26/2002	2758	Notice of Filing of Motion and Incorporated Memorandum for Order to Implement and Enforce Provisions of Sale Order Dated December 19, 2001 Filed by Winstar Holdings, LLC.
1926	07/26/2002	2759	Exhibits (Related document(s) 2758) Filed by Winstar Holdings, LLC.
1927	07/31/2002	2771	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/02 (Document #2644) for Winstar Communications, Inc.
1928	07/31/2002	2772	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 2/28/02 (Document #2645) for Winstar Wireless, Inc.
1929	07/31/2002	2773	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 2/28/02 (Document #2648) for Office.com, Inc.
1930	07/31/2002	2774	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 3/31/02 (Document #2649) for Winstar Communications, Inc.
1931	07/31/2002	2775	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 3/31/02 (Document #2650) for Winstar Wireless, Inc.

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1932	08/01/2002	2776	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 3/31/02 (Document #2651) for Winstar Interactive Media Sales
1933	08/01/2002	2777	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 3/31/02 (Document #2652) for Winstar New Media Company, Inc.
1934	08/01/2002	2779	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 3/31/02 (Document #2653) for Office.com, Inc.
1935	08/01/2002	2780	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 4/30/02 (Document #2654) for Winstar Communications, Inc.
1936	08/01/2002	2781	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 4/30/02 (Document #2655) for Winstar Wireless, Inc.
1937	08/01/2002	2782	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 4/30/02 (Document #2656) for Winstar Interactive Media Sales
1938	08/01/2002	2783	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 4/30/02 (Document #2657) for Winstar New Media Company, Inc.
1939	08/01/2002	2784	Supplemental Debtor-In-Possession Monthly Operating Report for Filing Period Month ending 4/30/02 (Document #2658) for Office.com, Inc.
1940	08/07/2002	2802	Motion to Approve the Asset Purchase Agreement and (ii) Authorizing the Sale of Debtors' Office Com and At Your Office, Inc. Assets to Thomas J. Graham Free and Clear of Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. Section 105(a) and 363(b)(1) Filed by Christine Shubert.
1941	09/19/2002	2910	ORDER (i) APPROVING THE ASSET PURCHASE AGREEMENT AND (ii) AUTHORIZING THE SALE OF DEBTORS' OFFICE COM AND AT YOUR OFFICE, INC. ASSETS TO THOMAS J. GRAHAM FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS-Order signed on 9/19/2002.
1942	09/26/2002	2932	Complaint by Christine Shubert against Citicapital Commercial Corporation, General Motors Acceptance Corporation ("GMAC"), and Lucent Technologies, Inc.
1943	10/25/2002	2997	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 7/31/2002 for Winstar Communications, Inc.
1944	10/25/2002	2998	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 7/31/2002 for Winstar Wireless, Inc.
1945	10/25/2002	3000	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 7/31/2002 for Winstar New Media Company, Inc.
1946	10/25/2002	3001	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 7/31/2002 for Winstar Interactive Media Sales
1947	10/25/2002	3002	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 7/31/2002 for Office.com, Inc.
1948	10/25/2002	3003	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/2002 for Winstar Communications, Inc.
1949	10/25/2002	3004	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/2002 for Winstar Wireless, Inc.
1950	10/25/2002	3005	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/2002 for Winstar New Media Company, Inc.
1951	10/25/2002	3006	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/2002 for Winstar Interactive Media Sales
1952	10/25/2002	3007	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/2002 for Office.com, Inc.

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1953	10/28/2002	3012	Motion to Shorten Time of Trustee's Motion for an Order (i) Approving the Share Sale and Purchase Agreement and (ii) Authorizing the Sale of the Assets of Winstar Communications Co. Ltd., Wallstreet Planner Co. Ltd., and Wallstreet Law and Accounting Office Co. Ltd. to Chirdsak Kukiattinun Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. Section 105(a) and 363(b)(1) Filed by Christine Shubert.
1954	10/28/2002	3013	Motion to Approve Sale (Share) and Purchase Agreement and (ii) Authorizing the Sale of the Assets of Winstar Communications Co. Ltd., Wallstreet Planner Co. Ltd., and Wallstreet Law and Accounting Office Co. Ltd. to Chirdsak Kukiattinun Free and Clear of All Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. Sections 105(a) and 363(b)(1) Filed by Christine Shubert.
1955	11/06/2002	3038	Order Granting Motion to Shorten Notice of Trustee's Motion for an Order Approving the Share Sale and Purchase Agreement, Authorizing The Sale of the Assets of Winstar Communications Co. LTD, Wallstreet Planner Co. LTD, and Wallstreet Law and Accounting Office Co. LTD, to Chirdsak Kukiattinun Free and Clear of all Liens, Claims, Encumbrances and Interests re doc #3012 signed on 11/6/2002.
1956	11/06/2002	3039	Order Granting order Approving the Share Sale and Purchase Agreement and Authorizing the Sale of Debtors Winstar Communications Co. LTD, Wallstreet Law and Accounting Office Co. LTD, Assets to Chirdsak Kukiattinun Free and Clear of all Liens, Claims, Encumbrance and Interests. re doc #3013
1957	12/09/2002	3084	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 9/30/02 for Winstar Communications, Inc.
1958	12/09/2002	3085	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 9/30/02 for Winstar Wireless, Inc.
1959	12/09/2002	3086	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 9/30/02 for Winstar New Media Company, Inc.
1960	12/09/2002	3087	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 9/30/02 for Winstar Interactive Media Sales
1961	12/09/2002	3088	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 9/30/02 for Office.com, Inc.
1962	12/09/2002	3089	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 10/31/02 for Winstar Communications, Inc.
1963	12/09/2002	3090	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 10/31/02 for Winstar Wireless, Inc.
1964	12/09/2002	3091	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 10/31/02 for Winstar New Media Company, Inc.
1965	12/09/2002	3092	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 10/31/02 for Winstar Interactive Media Sales
1966	12/09/2002	3094	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 10/31/02 for Office.com, Inc.
1967	02/27/2003	3192	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Winstar Communications, Inc.
1968	02/27/2003	3193	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Winstar Wireless, Inc.
1969	02/27/2003	3194	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Winstar New Media Company, Inc.
1970	02/27/2003	3195	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Winstar Interactive Media Sales, Inc.
1971	02/27/2003	3196	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Winstar International, Inc.
1972	02/27/2003	3197	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 11/30/2002 for Office.com, Inc.

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1973	02/27/2003	3198	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Winstar Communications, Inc.
1974	02/27/2003	3199	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Winstar Wireless, Inc.
1975	02/27/2003	3200	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Winstar New Media Company, Inc.
1976	02/27/2003	3201	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Winstar Interactive Media Sales, Inc.
1977	02/27/2003	3202	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Winstar International, Inc.
1978	02/27/2003	3203	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 12/31/2002 for Office.com, Inc.
1979	03/21/2003	3229	Motion to Compel MOTION OF LEASETEC CORPORATION, NKA KEY EQUIPMENT FINANCE, A DIVISION OF KEY CORPORATE CAPITAL INC. FOR AN ORDER DIRECTING WINSTAR COMMUNICATIONS, INC. TO COMPLY WITH THE ORDER AUTHORIZING (I) SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTEREST, (II) APPROVING CURE AMOUNTS WITH RESPECT TO CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) AUTHORIZING THE DEBTORS TO ENTER INTO AND APPROVING MANAGEMENT AGREEMENT, (IV) APPROVING REGULATORY TRANSITION PROCESS AND (V) GRANTING RELATED RELIEF Filed by Leasetec Corporation, nka Key Equipment Finance, a Division of Key Corporate Capital Inc.
1980	04/07/2003	3468	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar Communications, Inc.
1981	04/07/2003	3469	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar Wireless, Inc.
1982	04/07/2003	3470	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar New Media Company, Inc.
1983	04/07/2003	3471	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar Interactive Media Sales
1984	04/07/2003	3472	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar Interactive Vestures, Inc.
1985	04/07/2003	3473	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Winstar International, Inc.
1986	04/07/2003	3474	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 1/31/03 for Office.com, Inc.
1987	04/08/2003	3497	Response to Motion of Leasetec Corporation, NKA Key Equipment Finance, a Division of Key Corporate Capital, Inc., for an Order Directing Winstar Communications, Inc. to Comply with the Order Authorizing (i) Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (ii) Approving Cure Amounts with Respect to Certain Executory Contracts and Unexpired Leases, (iii) Authorizing the Debtors to Enter into and Approving Management Agreement, (iv) Approving Regulatory Transition Process and (v) Granting Related Relief (related document(s) 3229) Filed by Christine Shubert

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1988	04/08/2003	3520	Objection to Motion of Leasetec Corporation, NKA Key Equipment Finance, a Division of Key Corporate Capital, Inc. for an Order Directing Winstar Communications, Inc. to Comply with the Order Authorizing (i) Sale of Certain of the Debtors' Assets Free and Clear Liens, Claims, and Encumbrances, and Interests, (ii) Approving Cure Amounts with Respect to Certain Executory Contracts and Unexpired Leases, (iii) Authorizing the Debtors to Enter Into and Approving Management Agreement, (iv) Approving Regulatory Transition Process and (v) Granting Related Relief Filed by WINSTAR COMMUNICATIONS, INC.
1989	04/09/2003	3544	Stipulation and Agreed Order Resolving Motion of Secured Creditor Lucent Technologies, Inc. for Relief from Automatic Stay or, Alternatively, Adequate Protection with Respect to Certain Investment and Disbursement Accounts (related document(s)[373]) Order Signed on 4/9/2003
1990	04/10/2003	3560	Affidavit/Declaration of Service of Rebecca V Childs Re: Docket No. 3544 (related document(s)[3544]) Filed by Lucent Technologies
1991	04/14/2003	3659	Complaint by CHRISTINE C SHUBERT, TRUSTEE against BNY Capital Resources Corporation.
1992	04/14/2003	3692	Complaint by CHRISTINE C. SHUBERT, TRUSTEE against Siemens Information & Communication Networks, Inc..
1993	04/14/2003	3693	Complaint by CHRISTINE C. SHUBERT, TRUSTEE against Siemens Telecom Networks.
1994	04/17/2003	3778	Complaint by Christine Shubert against Lucent Technologies, Inc..
1995	06/27/2003	3832	Complaint by CHRISTINE C. SHUBERT, TRUSTEE against Winstar Holdings, LLC f/k/a IDT Winstar Acquisition, Inc..
1996	07/03/2003	3839	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/03 for Winstar Communications, Inc.
1997	07/03/2003	3840	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/03 for Winstar Interactive Media Sales
1998	07/03/2003	3841	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/03 for Winstar International, Inc.
1999	07/03/2003	3842	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 2/28/03 for Winstar Interactive Vestures, Inc.
2000	07/03/2003	3843	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/03 for Winstar Wireless, Inc.
2001	07/03/2003	3844	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 2/28/03 for Office.com, Inc.
2002	07/03/2003	3845	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Winstar Communications, Inc.
2003	07/03/2003	3846	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Winstar Interactive Media Sales
2004	07/03/2003	3847	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Winstar International, Inc.
2005	07/03/2003	3848	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Winstar Interactive Vestures, Inc.
2006	07/03/2003	3849	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Winstar Wireless, Inc.
2007	07/03/2003	3850	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 3/31/03 for Office.com, Inc.
2008	08/13/2003	3900	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 2/28/03 for Winstar New Media Company, Inc.
2009	08/13/2003	3901	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 3/31/03 for Winstar New Media Company, Inc.

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2010	08/13/2003	3902	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar New Media Company, Inc.
2011	08/13/2003	3903	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar New Media Company, Inc.
2012	08/13/2003	3904	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar Communications, Inc.
2013	08/13/2003	3905	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar Communications, Inc.
2014	08/13/2003	3906	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar Wireless, Inc.
2015	08/13/2003	3907	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar Wireless, Inc.
2016	08/13/2003	3908	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar Interactive Media Sales
2017	08/13/2003	3909	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar Interactive Media Sales
2018	08/13/2003	3910	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar International, Inc.
2019	08/13/2003	3911	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar International, Inc.
2020	08/13/2003	3912	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Winstar Interactive Vestures, Inc.
2021	08/13/2003	3913	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Winstar Interactive Vestures, Inc.
2022	08/13/2003	3914	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 4/30/03 for Office.com, Inc.
2023	08/13/2003	3915	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 5/31/03 for Office.com, Inc.
2024	09/12/2003	3945	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar Communications, Inc.
2025	09/12/2003	3946	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar New Media Company, Inc.
2026	09/12/2003	3947	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar Interactive Media Sales
2027	09/12/2003	3948	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar Interactive Vestures, Inc.
2028	09/12/2003	3949	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar Wireless, Inc.
2029	09/12/2003	3950	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Winstar International, Inc.
2030	09/12/2003	3951	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended June 30, 2003 for Office.com, Inc.
2031	09/12/2003	3952	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar Communications, Inc.
2032	09/12/2003	3953	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar New Media Company, Inc.
2033	09/12/2003	3954	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar Interactive Media Sales
2034	09/12/2003	3955	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar Interactive Vestures, Inc.
2035	09/12/2003	3956	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar Wireless, Inc.

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2036	09/12/2003	3957	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Winstar International, Inc.
2037	09/12/2003	3958	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended July 31, 2003 for Office.com, Inc.
2038	10/20/2003	4007	Motion to Approve Settlement Stipulation with Lucent Technologies, Inc Pursuant to Federal Bankruptcy Rule 9019
2039	11/12/2003	4026	Order Approving Settlement with Lucent Technologies Inc Pursuant to Fed. R. Bankr. P. 9019. Order Signed on 11/12/2003 (related document(s)4007).
2040	12/10/2003	4070	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Winstar Communications, Inc.
2041	12/10/2003	4071	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Winstar New Media Company, Inc.
2042	12/10/2003	4072	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Winstar Interactive Media Sales
2043	12/10/2003	4073	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Winstar International, Inc.
2044	12/10/2003	4074	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ended 8/31/03 for Winstar Interactive Vestures, Inc.
2045	12/10/2003	4075	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Winstar Wireless, Inc.
2046	12/10/2003	4076	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 8/31/03 for Office.com, Inc.
2047	01/09/2004	4086	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar Communications, Inc.
2048	01/09/2004	4087	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar New Media Company, Inc
2049	01/09/2004	4088	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar Interactive Media Sales)
2050	01/09/2004	4089	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar International, Inc.
2051	01/09/2004	4090	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar Interactive Vestures, Inc.
2052	01/09/2004	4091	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Winstar Wireless, Inc.
2053	01/09/2004	4092	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 9/30/03 for Office.com, Inc.
2054	01/09/2004	4093	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar Communications, Inc.
2055	01/09/2004	4094	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar New Media Company, Inc.
2056	01/09/2004	4095	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar Interactive Media Sales
2057	01/09/2004	4096	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar International, Inc.
2058	01/09/2004	4097	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar Interactive Vestures, Inc.
2059	01/09/2004	4098	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Winstar Wireless, Inc.
2060	01/09/2004	4099	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 10/31/03 for Office.com, Inc.
2061	01/09/2004	4100	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar Communications, Inc.

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2062	01/09/2004	4101	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar New Media Company, Inc.
2063	01/09/2004	4102	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar Interactive Media Sale
2064	01/09/2004	4103	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar International, Inc.
2065	01/09/2004	4104	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar Interactive Vestures, Inc.
2066	01/09/2004	4105	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Winstar Wireless, Inc.
2067	01/09/2004	4106	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 11/30/03 for Office.com, Inc.
2068	02/03/2004	4123	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar Communications, Inc.
2069	02/03/2004	4124	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar New Media Company, Inc.
2070	02/03/2004	4125	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar International, Inc.
2071	02/03/2004	4126	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar Interactive Media Sales
2072	02/03/2004	4127	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar Interactive Vestures, Inc.
2073	02/03/2004	4128	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Winstar Wireless, Inc.
2074	02/03/2004	4129	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2003 for Office.com, Inc.
2075	03/10/2004	4139	Certificate of No Objection (related document(s)4133)
2076	03/12/2004	4140	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar Communications, Inc.
2077	03/12/2004	4141	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar Interactive Media Sales
2078	03/12/2004	4142	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar New Media Company, Inc.
2079	03/12/2004	4143	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar International, Inc.
2080	03/12/2004	4144	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar Interactive Vestures, Inc.
2081	03/12/2004	4145	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Winstar Wireless, Inc. Filed by Christine Shubert (Rennie, Sheldon) (Entered: 03/12/2004)
2082	03/12/2004	4146	Debtor-In-Possession Monthly Operating Report for Filing Period Month Ending 1/31/04 for Office.com, Inc.
2083	04/28/2004	4195	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2/29/04 for Winstar Communications, Inc.
2084	04/28/2004	4196	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2/29/04 for Winstar Interactive Media Sales
2085	04/28/2004	4197	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2-29-04 for Winstar New Media Company, Inc.
2086	04/28/2004	4198	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2-29-04 for Winstar International, Inc.
2087	04/28/2004	4199	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2-29-04 for Winstar Interactive Vestures, Inc.

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2088	04/28/2004	4200	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2-29-04 for Winstar Wireless, Inc.
2089	04/28/2004	4201	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 2-29-04 for Office.com, Inc.
2090	05/07/2004	4204	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar Communications, Inc.
2091	05/07/2004	4205	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar Interactive Media Sales
2092	05/07/2004	4206	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar New Media Company, Inc.
2093	05/07/2004	4207	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar International, Inc.
2094	05/07/2004	4208	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar Interactive Vestures, Inc.
2095	05/07/2004	4209	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Winstar Wireless, Inc.
2096	05/07/2004	4210	Debtor-In-Possession Monthly Operating Report for Filing Period ending March 31, 2004 for Office.com, Inc.
2097	06/04/2004	4227	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar Communications, Inc. Filed by Christine Shubert (Rennie, Sheldon) (Entered: 06/04/2004)
2098	06/04/2004	4228	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar Interactive Media Sales Filed by Christine Shubert (Rennie, Sheldon) (Entered: 06/04/2004)
2099	06/04/2004	4229	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar New Media Company, Inc.
2100	06/04/2004	4230	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar International, Inc.
2101	06/04/2004	4231	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar Interactive Vestures, Inc.
2102	06/04/2004	4232	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Winstar Wireless, Inc.
2103	06/04/2004	4233	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 4/30/04 for Office.com, Inc.
2104	07/07/2004	4249	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar Communications, Inc.
2105	07/07/2004	4250	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar Interactive Media Sales
2106	07/07/2004	4251	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar New Media Company, Inc.
2107	07/07/2004	4252	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar International, Inc.
2108	07/07/2004	4253	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar Interactive Vestures, Inc.
2109	07/07/2004	4254	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Winstar Wireless, Inc.
2110	07/07/2004	4255	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2004 for Office.com, Inc.
2111	08/20/2004	4291	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar Communications, Inc.
2112	08/20/2004	4292	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar Interactive Media Sales

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2113	08/20/2004	4293	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar New Media Company, Inc.
2114	08/20/2004	4294	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar International, Inc. Filed by Christine Shubert (Rennie, Sheldon) (Entered: 08/20/2004)
2115	08/20/2004	4295	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar Interactive Vestures, Inc.
2116	08/20/2004	4296	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Winstar Wireless, Inc.
2117	08/20/2004	4297	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 6/30/2004 for Office.com, Inc
2118	09/15/2004	4313	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar Communications, Inc.
2119	09/15/2004	4314	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar Interactive Media Sales
2120	09/15/2004	4315	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar New Media Company, Inc
2121	09/15/2004	4316	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar International, Inc.
2122	09/15/2004	4317	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar Interactive Vestures, Inc.
2123	09/15/2004	4318	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Winstar Wireless, Inc.
2124	09/15/2004	4319	Debtor-In-Possession Monthly Operating Report for Filing Period Ending July 31, 2004 for Office.com, Inc.
2125	09/30/2004	4340	Notice of Completion of Briefing Corrected Notice of Completion of Briefing Filed by Lucent Technologies.)
2126	10/07/2004	4343	Motion to Approve Settlement Stipulation with Lucent Technologies, Inc Pursuant to Federal Bankruptcy Rule 9019
2127	10/25/2004	4345	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar Communications, Inc.
2128	10/25/2004	4346	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar Interactive Media Sales
2129	10/25/2004	4347	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar New Media Company, Inc.
2130	10/25/2004	4348	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar International, Inc.
2131	10/25/2004	4349	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar Interactive Vestures, Inc Filed by Christine Shubert (Menkowitz, Michael) (Entered: 10/25/2004)
2132	10/25/2004	4350	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Winstar Wireless, Inc.
2133	10/25/2004	4351	Debtor-In-Possession Monthly Operating Report for Filing Period Ending August 31, 2004 for Office.com, Inc.
2134	10/29/2004	4352	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar Communications
2135	10/29/2004	4353	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar Interactive Media Sales
2136	10/29/2004	4354	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar New Media Company, Inc.
2137	10/29/2004	4355	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar International, Inc.

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2138	10/29/2004	4356	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar Interactive Vestures, Inc.
2139	10/29/2004	4357	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Winstar Wireless, Inc.
2140	10/29/2004	4358	Debtor-In-Possession Monthly Operating Report for Filing Period Ending September 30, 2004 for Office.com, Inc.
2141	11/04/2004	4360	Order Approving Settlement Stipulation with Lucent Technologies, Inc. (Related Doc # 4343)
2142	12/15/2004	4366	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar Communications, Inc.
2143	12/15/2004	4367	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar New Media Company, Inc.
2144	12/15/2004	4368	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar Interactive Ventures, Inc.
2145	12/15/2004	4369	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar Interactive Media Sales
2146	12/15/2004	4370	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Office.com, Inc.
2147	12/15/2004	4371	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar Wireless, Inc. Filed by Christine Shubert (Rennie, Sheldon) (Entered: 12/15/2004)
2148	12/15/2004	4372	Debtor-In-Possession Monthly Operating Report for Filing Period October, 2004 for Winstar International, Inc.
2149	01/21/2005	4386	Debtor-In-Possession Monthly Operating Report for Filing Period Ending November 30, 2004 for Winstar Communications, Inc.
2150	01/21/2005	4387	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Winstar Interactive Media Sales
2151	01/21/2005	4388	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Winstar New Media Company, Inc.
2152	01/21/2005	4389	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Winstar International, Inc.
2153	01/21/2005	4390	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Winstar Interactive Vestures, Inc.
2154	01/21/2005	4391	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Winstar Wireless, Inc.
2155	01/21/2005	4392	Debtor-In-Possession Monthly Operating Report for Filing Period Ending December 31, 2004 for Office.com, Inc.
2156	02/04/2005	4400	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar Communications, Inc.
2157	02/04/2005	4401	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar Interactive Media Sales Filed by Christine Shubert (Rennie, Sheldon) (Entered: 02/04/2005)
2158	02/04/2005	4402	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar New Media Company, Inc.
2159	02/04/2005	4403	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar International, Inc.
2160	02/04/2005	4404	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar Interactive Vestures, Inc.
2161	02/04/2005	4405	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Winstar Wireless, Inc. Filed by Christine Shubert (Rennie, Sheldon) (Entered: 02/04/2005)

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2162	02/04/2005	4406	Debtor-In-Possession Monthly Operating Report for Filing Period Ending 12/31/2004 for Office.com, Inc.
2163	03/04/2005	4428	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar Communications, Inc. (Part 1) Filed by Christine Shubert (Attachments: # 1 Part 2# 2 Part 3)
2164	03/04/2005	4429	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar Interactive Media Sales
2165	03/04/2005	4430	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar New Media Company, Inc.
2166	03/04/2005	4431	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar International, Inc.
2167	03/04/2005	4432	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar Interactive Vestures, Inc.
2168	03/04/2005	4433	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Winstar Wireless, Inc.
2169	03/04/2005	4434	Debtor-In-Possession Monthly Operating Report for Filing Period Ending January 31, 2005 for Office.com, Inc.
2170	03/31/2005	4449	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar Communications, Inc.
2171	03/31/2005	4450	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar Interactive Media Sales
2172	03/31/2005	4451	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar New Media Company, Inc.
2173	03/31/2005	4452	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar International, Inc.
2174	03/31/2005	4453	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar Interactive Vestures, Inc.
2175	03/31/2005	4454	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Winstar Wireless, Inc.
2176	03/31/2005	4455	Debtor-In-Possession Monthly Operating Report for Filing Period Ending February 28, 2005 for Office.com, Inc. Filed by Christine Shubert (Menkowitz, Michael) (Entered: 03/31/2005)
2177	05/02/2005	4475	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar Communications, Inc. Filed by Christine Shubert (Menkowitz, Michael) (Entered: 05/02/2005)
2178	05/02/2005	4476	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar Interactive Media Sales Filed by Christine Shubert (Menkowitz, Michael) (Entered: 05/02/2005)
2179	05/02/2005	4477	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar New Media Company, Inc.
2180	05/02/2005	4478	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar International, Inc.
2181	05/02/2005	4479	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar Interactive Vestures, Inc.
2182	05/02/2005	4480	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Winstar Wireless, Inc.
2183	05/02/2005	4481	Debtor-In-Possession Monthly Operating Report for Filing Period Ending March 31, 2005 for Office.com, Inc.
2184	06/07/2005	4495	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar Communications, Inc.
2185	06/07/2005	4496	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar Interactive Media Sales

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**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
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2186	06/07/2005	4497	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar New Media Company, Inc.
2187	06/07/2005	4498	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar International, Inc.
2188	06/07/2005	4499	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar Interactive Vestures, Inc.
2189	06/07/2005	4500	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Winstar Wireless, Inc.
2190	06/07/2005	4501	Debtor-In-Possession Monthly Operating Report for Filing Period Ending April 30, 2005 for Office.com, Inc. Filed by Christine Shubert (Menkowitz, Michael) (Entered: 06/07/2005)
2191	08/01/2005	4522	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar Communications, Inc.
2192	08/01/2005	4523	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar Interactive Media Sales
2193	08/01/2005	4524	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar New Media Company, Inc.
2194	08/01/2005	4525	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar International, Inc. Filed by Christine Shubert (Menkowitz, Michael) (Entered: 08/01/2005)
2195	08/01/2005	4526	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar Interactive Vestures, Inc.
2196	08/01/2005	4527	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Winstar Wireless, Inc.
2197	08/01/2005	4528	Debtor-In-Possession Monthly Operating Report for Filing Period Ending May 31, 2005 for Office.com, Inc.
2198	08/03/2005	4529	Debtor-In-Possession Monthly Operating Report for Filing Period Ending June 30, 2005 for Winstar Communications, Inc.
2199	08/03/2005	4530	Debtor-In-Possession Monthly Operating Report for Filing Period Ending June 30, 2005 for Winstar Interactive Media Sales
2220	08/03/2005	4531	Debtor-In-Possession Monthly Operating Report for Filing Period Ending June 30, 2005 for Winstar New Media Company, Inc.
2201	08/03/2005	4532	Debtor-In-Possession Monthly Operating Report for Filing Period Ending June 30, 2005 for Winstar International, Inc.
2202	08/03/2005	4533	Debtor-In-Possession Monthly Operating Report for Filing Period June 30, 2005 for Winstar Interactive Vestures, Inc.
2203	08/03/2005	4534	Debtor-In-Possession Monthly Operating Report for Filing Period June 30, 2005 for Winstar Wireless, Inc.
2204	08/03/2005	4535	Debtor-In-Possession Monthly Operating Report for Filing Period June 30, 2005 for Office.com, Inc.
2205	04/18/2001	7	AFFIDAVIT of Timothy R. Graham in Support of Chapter 11 Petitions and First Day Motions and Applications
2206	04/18/2001	21	MOTION for Order [I] Authorizing Debtors to Enter into Post-Petition Credit Agreement and Obtain Post-Petition Financing, [II] Providing Adequate Protection and Granting Liens, Security Interests and Superpriority Claims, [III] Granting Interim Relief and [IV] Scheduling a Final Hearing, [ID] INTERIM Order Signed and Located in Original Document Re: Item # 21
2207	05/07/2001	158	RESPONSE to Objections to Motion for Order Authorizing Debtor to Obtain Post-Petition Financing
2208	05/10/2001	186	TRANSCRIPT of Hearing Held 5/8/01 at 12:38 P.M
2209	05/14/2001	202	FINAL Order Authorizing Debtors to Enter Into Post-Petition Credit Agreement and Obtain Post-Petition Financing, Providing Adequate Protection and Granting Liens, Security Interests and Superpriority Claims Re: Item # 21

EXHIBIT A**APPELLANT'S AMENDED DESIGNATION OF ITEMS TO
BE INCLUDED IN THE RECORD ON APPEAL**

2210	06/08/2001	334	MOTION for Order [EMERGENCY] For Interim Amendment Order Authorizing Amendment of Post-Petition Credit Agreement [Filed by Pauline K. Morgan, Attys.
2211	10/15/2002	2968	Stipulation and Agreed Order by Winstar and General Motors Resolving Motion and Memorandum for Order to Implement and Enforce Provisions of Sale Order Dated Dec. 19, 2001

EXHIBIT E

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 7
	:	
WINSTAR COMMUNICATIONS, INC., <u>et al.</u> ,	:	Case No. 01-1430
	:	Jointly Administered
Debtors.	:	
	:	
	:	
	X	
	:	
CHRISTINE C. SHUBERT, CHAPTER 7	:	
TRUSTEE,	:	Adversary Proceeding No. 01-1063 (JBR)
	:	
Plaintiff,	:	
	:	APPELLEE'S CROSS-DESIGNATION
v.	:	OF ITEMS TO BE INCLUDED IN THE
	:	RECORD ON APPEAL
LUCENT TECHNOLOGIES INC.,	:	
	:	
Defendant.	:	
	:	
	X	

Pursuant to Federal Rule of Bankruptcy Procedure 8006, Appellee Christine C. Shubert, Chapter 7 Trustee of Winstar Communications, Inc. and Winstar Wireless, Inc., hereby designates the following items for inclusion in the record. True and complete copies of the Record items are annexed hereto as Exhibit "A".

From Shubert v. Lucent Technologies Inc., United States District Court, District of
 Delaware, Civil Action No. 04-928(JJF):

Tab	Date	District Court Docket No.	Description of Item
2212	11/16/2004	11	MEMORANDUM OPINION (signed by Judge Joseph J. Farnan Jr.) re: DI #12
2213	11/16/2004	12	ORDER denying Lucent's motion to Withdraw the Reference to the Bankruptcy Court
2214	9/8/2005	21	MEMORANDUM ORDER denying [13] Motion to Certify Order for Appeal Pursuant to 28 U.S.C. 1292(b)

Dated: Wilmington, Delaware
 January 26, 2006

FOX, ROTHSCHILD LLP

By: /s/ Sheldon K. Rennie (#3772)
 Sheldon K. Rennie, Esq.
 Citizens Bank Center
 919 North Market Street, Suite 1300
 Wilmington, Delaware 19899-2323
 Telephone: (302) 622-4202
 Facsimile: (302) 656-8920

-and-

HERRICK, FEINSTEIN LLP
 Stephen M. Rathkopf, Esq.
 David R. King, Esq.
 2 Park Avenue
 New York, New York 10016
 Telephone: (212) 592-1400
 Facsimile: (212) 592-1500

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

2004 NOV 16 PM 2:45

IN RE:

WINSTAR COMMUNICATIONS, INC.,
et al.,

Debtors.

Chapter 7

Bankruptcy Case No. 01-01430

CHRISTINE C. SHUBERT, CHAPTER 7
TRUSTEE OF WINSTAR COMMUNICATIONS,
INC. AND WINSTAR WIRELESS, INC.,

Plaintiff,

v.

LUCENT TECHNOLOGIES, INC.,

Defendant.

Adversary No. 01-01063

Civil Action No. 04-928 JJF

ORDER

At Wilmington, this 16 day of November 2004, for the
reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the Motion Of Defendant Lucent
Technologies, Inc. To Withdraw The Reference To The Bankruptcy
Court (D.I. 1) is DENIED.


UNITED STATES DISTRICT JUDGE

11/16/04
144

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2004 NOV 16 PM 2:45

IN RE: :
WINSTAR COMMUNICATIONS, INC., : Chapter 7
et al., : Bankruptcy Case No. 01-01430
Debtors. :

CHRISTINE C. SHUBERT, CHAPTER 7 :
TRUSTEE OF WINSTAR COMMUNICATIONS, :
INC. AND WINSTAR WIRELESS, INC., :
Plaintiff, : Adversary No. 01-01063
v. : Civil Action No. 04-928 JJF
LUCENT TECHNOLOGIES, INC., :
Defendant. :

Sheldon K. Rennie, Esquire of FOX, ROTHSCHILD LLP, Wilmington,
Delaware.
Of Counsel: Stephen M. Rathkopf, Esquire and David R. King,
Esquire of HERRICK, FEINSTEIN LLP, New York, New York; Richard G.
Smolev, Esquire of KAYE SCHOLER LLP, New York, New York.
Attorneys for Plaintiff.

Daniel J. DeFranceschi, Esquire; Rebecca L. Booth, Esquire, and
Jason M. Madron, Esquire of RICHARDS, LAYTON & FINGER, P.A.,
Wilmington, Delaware.
Of Counsel: Paul C. Saunders, Esquire and Daniel Slifkin, Esquire
of CRAVATH, SWAINE & MOORE LLP, New York, New York.
Attorneys for Defendant.

MEMORANDUM OPINION

November 16, 2004
Wilmington, Delaware


Farnen, District Judge

Presently before the Court is the Motion Of Defendant Lucent Technologies, Inc. To Withdraw The Reference To The Bankruptcy Court (D.I. 1). For the reasons discussed, Lucent's motion will be denied.

Background

On April 18, 2001, Winstar Communications, Inc. and Winstar Wireless, Inc. (collectively, "Winstar") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Winstar concurrently commenced an Adversary Proceeding alleging that Lucent Technologies, Inc. ("Lucent") breached several of the contracts between Winstar and Lucent, allegedly forcing Winstar to file its bankruptcy petition. Lucent filed several proofs of claim, asserting claims against Winstar that include secured and unsecured claims for sums alleged due under agreements between Lucent and Winstar.

In January 2002, the Court converted the bankruptcy to Chapter 7 and the bulk of Winstar's assets were subsequently liquidated. Following the conversion, Christine C. Shubert ("the Trustee") interceded to prosecute this action as Plaintiff and filed the Second Amended Complaint (A.D.I. 69).

In the Second Amended Complaint, the Trustee demanded a "trial by jury as to all issues so triable," and added Count XI, a claim seeking to equitably subordinate Lucent's claims. Two

other claims remain in the case--Count VII for Breach of the Parties' Subcontracting Arrangement and Count X for Return of Preferential Transfer.

After the Bankruptcy Court decided the Motion of Lucent Technologies Inc. to Dismiss Certain Claims Of The Second Amended Complaint (A.D.I. 70), Lucent made a demand for a jury trial and asserted four counterclaims for fraud and negligent misrepresentation. (A.D.I. 156.) Lucent asserted these counterclaims with regard to financial information that Winstar allegedly provided to Lucent during due diligence that Lucent conducted in November and December 2000.

There is currently a Motion For Summary Judgment (A.D.I. 210) filed by Lucent pending in the Bankruptcy Court.

The Bankruptcy Court has not determined whether this matter is a core or non-core proceeding.

Parties' Contentions

By its motion, Lucent seeks to withdraw the reference of the Adversary Proceeding from the Bankruptcy Court. Lucent contends that "cause" for permissive withdrawal exists for several reasons related to its alleged right to a jury trial in the district court.

First, Lucent contends that it is entitled to a trial by jury based on the Trustee's demand for a jury trial, which, pursuant to Federal Rule of Civil Procedure 38, may not be

revoked without Lucent's consent.

Second, Lucent contends that it did not waive its right to a jury trial before the district court as to all claims when Lucent filed its proof of claim. Lucent contends that filing a proof of claim waives only the right to a jury trial in the district court as to claims that are necessarily part of the disallowance or allowance of the proof of claim. Lucent contends that Counts VII and X and Lucent's counterclaims are not necessary elements in the allowance or disallowance of Lucent's proofs of claim. Furthermore, Lucent contends that the district court should hear the Trustee's claim for equitable subordination, not triable to a jury as of right, because it arises from the same facts, transactions, and issues raised by Counts VII and X.

Third, Lucent contends that it would be more efficient for the district court to decide the pending motion for summary judgment in this action because it reviews de novo any such ruling made by the Bankruptcy Court.

Finally, Lucent argues that, because the Court need not determine whether the remaining claims in this lawsuit are core or non-core, Local Bankruptcy Court Rule 5011-1 should be waived.

In response, the Trustee contends that Lucent waived any right to a jury trial when it filed proofs of claim against the estate. The Trustee specifically contends that by filing the claims, Lucent submitted itself to the Bankruptcy Court's

equitable powers and conferred jurisdiction upon the Bankruptcy Court to consider its counterclaims as a core matter. The Trustee further contends that, should the Court determine the matter is non-core and that Lucent has a right to a jury trial, Lucent's motion should be denied because: 1) Lucent's jury demand was defective; 2) Lucent's demand to withdraw the reference is untimely; and 3) Lucent's motion to withdraw the reference is procedurally defective because Lucent has failed to move before the Bankruptcy Court for a core/non-core determination.

Discussion

I. Legal Standard For Discretionary Withdrawal Of A Reference

Under 28 U.S.C. § 1334(b), district courts "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." Pursuant to 28 U.S.C. § 157(a), each district court may refer cases under title 11 to the Bankruptcy Court for disposition. However, under Section 157(d), the referred proceeding can be withdrawn from the Bankruptcy Court and returned to the district court. Section 157(d) provides for both mandatory withdrawal and discretionary withdrawal. In this case, Lucent seeks withdrawal only under the standards for discretionary withdrawal.

In providing for discretionary withdrawal, Section 157(d) states: "The district court may withdraw, in whole or in part,

any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d). This Court has acknowledged that the requirement that cause be shown "creates a 'presumption that Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court, unless rebutted by a contravening policy.'" Hatzel & Buehler, Inc. v. Central Hudson Gas & Elec., 106 B.R. 367, 371 (D. Del. 1989) (citations omitted).

The Court of Appeals for the Third Circuit has set forth five factors that a district court should consider in determining whether "cause" exists for discretionary withdrawal. These factors include: 1) promoting uniformity in bankruptcy administration; 2) reducing forum shopping and confusion; 3) fostering economical use of debtor/creditor resources; 4) expediting the bankruptcy process; and 5) timing of the request for withdrawal. In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990) (citing Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)).

Local Rules for the United States Bankruptcy Court for the District of Delaware state that the movant for withdrawal shall concurrently file with the Clerk a motion for a determination by the Bankruptcy Court with respect to whether the matter or proceeding is core or non-core. Bankr. D. Del. R. 5011-1.

II. Lucent's Right To A Jury Trial

The sole reason for "cause" for permissive withdrawal that Lucent cites in its briefs is Lucent's right to a jury trial on Counts VII and X of the Trustee's Second Amended Complaint and on Lucent's counterclaims for fraud and negligent misrepresentation. The parties do not dispute that these issues may, by right, be triable by a jury.

A. Count X, Preferential Payment Claim

Count X seeks to recover \$194 million paid by Winstar to Lucent in December 2000. The Court finds that Lucent may have been entitled to a jury trial on the issue of preferential payment had it presented no claim in the bankruptcy proceeding and awaited a federal action by the Trustee. See Schoenthal v. Irving Trust Co., 287 U.S. 92, 94-95 (1932). However, a creditor who submits a proof of claim against a bankruptcy estate has no right to a jury trial on issues raised in defense of such a claim. Billing v. Ravin, Greenberg & Zackin, P.A., 22 F.3d 1242, 1250 (3d Cir. 1994) (citing Langenkamp v. Culp, 498 U.S. 42, 45 (1990)).

The Court finds that, in view of the holdings in Billing and Langenkamp, Lucent's filing proofs of claim triggered the process of allowance and disallowance of those claims, thereby subjecting Lucent to the equity power of the Bankruptcy Court. Thus, the Court finds that the Trustee's subsequent preference action is

now part of the claims allowance process, and is triable only in equity. *Id.* For these reasons, the Court concludes that there is no right to a jury trial on the issue of the alleged preferential transfer.

Lucent contends that Langenkamp is inapplicable in these circumstances because the Trustee made a jury demand and, pursuant to Federal Rule of Civil Procedure 38, cannot withdraw that jury demand without Lucent's consent. Rule 38(d), which states that a jury demand "may not be withdrawn without the consent of the parties," ensures that one party may rely on another's jury demand. Fed. R. Civ. P. 38. However, the Court finds that because Lucent waived its right to a jury trial as to the alleged preferential transfer, its consent to the Trustee's withdrawal of her jury trial demand is not required. *See Moore, Federal Practice 3d* § 38.50[10][d].

B. Count VII. Subcontract Claim

In Count VII, the Trustee alleges that Lucent breached the subcontract between Lucent and Winstar Wireless, Inc. and/or breached a legally-binding course of conduct between Lucent and Winstar. Lucent contends that whether it is found to have breached an alleged obligation to lend additional money to Winstar has no bearing on Lucent's ability to recover on its proofs of claim. The Court is not persuaded by Lucent's argument that the determination of its proofs of claim does not depend on

the outcome of the Trustee's Subcontract Claim. The Court finds that the Trustee's Subcontract Claim may affect the ordering of creditors or the equitable distribution of the res of the estate and, thus, is now part of the claims allowance process, triable only in equity. For this reason, the Court concludes that there is no right to a jury trial on the issue of the Subcontract Claim.

C. Lucent's Counterclaims

Similarly, the Court is not persuaded that Lucent's Fraud and Negligent Misrepresentation Counterclaims will not affect the allowance or disallowance of Lucent's proofs of claim. The Court finds that Lucent's Fraud and Negligent Misrepresentation Counterclaims involve a decision regarding the distribution of the bankruptcy estate and, thus, are now part of the claims allowance process, triable only in equity. For this reason, the Court concludes that there is no right to a jury trial on the issue of the Fraud and Negligent Misrepresentation Counterclaims.

III. In Re Pruitt Factors For Cause

Although Lucent has not addressed the standards for "cause" for a permissive withdrawal of a reference set forth in In re Pruitt, 910 F.2d at 1168, the Court does not find that the factors as a whole support the Court's withdrawing the reference to the Bankruptcy Court for several reasons.

First, the Court finds that the timing of the request for

withdrawal supports the proceeding remaining in Bankruptcy Court. The Adversary Proceeding has already been in Bankruptcy Court for over two years, and the Bankruptcy Court has overseen extensive discovery and pretrial matters, and has decided a motion to dismiss filed by Lucent.

Next, the Court finds that considerations of uniformity in bankruptcy administration support the proceeding being heard in the Bankruptcy Court. The preferential payment and equitable subordination claims are purely bankruptcy-related in nature and the resolution of these claims will affect the distribution to creditors within the proceeding.

Finally, the Court finds that maintaining the proceeding in Bankruptcy Court will diminish the risk of forum shopping and will lessen confusion by fostering consistent administration of the estate.

For these reasons, the Court concludes that the Ruitt factors do not support withdrawing the reference from the Bankruptcy Court.

IV. Local Bankruptcy Rule 5011-1

The record does not show that Lucent has filed a motion for determination by the Bankruptcy Court as to whether the matter or proceeding is core or non-core. Thus, the Court finds that Lucent did not follow Local Bankruptcy Court Rule 5011-1. For this additional reason, the Court will maintain the proceeding

before the Bankruptcy Court.

Conclusion

In sum, the Court concludes that discretionary withdrawal of the instant adversary proceeding is not warranted because: 1) Lucent has waived its right to a jury trial with regard to the claims at issue; 2) the factors set forth in In re Pruitt do not support a finding of cause; and 3) Lucent has not followed Local Bankruptcy Rule 5011-1. Accordingly, the Court will deny the Motion Of Defendant Lucent Technologies, Inc. To Withdraw The Reference To The Bankruptcy Court (D.I. 1).

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHRISTINE C. SHUBERT, Chapter 7 :
Trustee of Winstar Communications, :
Inc. and Winstar Wireless, Inc., :
Plaintiff, :
v. : Civil Action No. 04-928 JJF
LUCENT TECHNOLOGIES, INC., :
Defendant. :

MEMORANDUM ORDER

Pending before the Court is the Motion To Certify Order For Appeal Pursuant To 28 U.S.C. § 1292(b) (D.I. 13) filed by Defendant Lucent Technologies, Inc. ("Lucent"). For the reasons set forth below, the motion will be denied.

I. BACKGROUND

On April 18, 2001, Winstar Communications, Inc. and Winstar Wireless, Inc. (collectively, "Winstar") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Winstar concurrently commenced an Adversary Proceeding alleging that Lucent Technologies, Inc. ("Lucent") breached several of the contracts between Winstar and Lucent, allegedly forcing Winstar to file its bankruptcy petition. Lucent filed several proofs of claim, asserting claims against Winstar that include secured and unsecured claims for sums allegedly due under agreements between Lucent and Winstar.

In January 2002, the Bankruptcy Court converted the Winstar bankruptcy proceeding from a Chapter 11 case to a Chapter 7 case,

and the bulk of Winstar's assets were subsequently liquidated. Following the conversion, Christine C. Shubert ("the Trustee") interceded to prosecute this action as Plaintiff and filed the Second Amended Complaint (A.D.I. 69).

In the Second Amended Complaint, the Trustee demanded a "trial by jury as to all issues so triable," and added Count XI, a claim seeking to equitably subordinate Lucent's claims. Two other claims remain in the case, Count VII for Breach of the Parties' Subcontracting Arrangement and Count X for Return of Preferential Transfer.

After the Bankruptcy Court decided the Motion of Lucent Technologies Inc. to Dismiss Certain Claims Of The Second Amended Complaint (A.D.I. 70), Lucent made a demand for a jury trial and asserted four counterclaims for fraud and negligent misrepresentation. (A.D.I. 156.) Lucent asserted these counterclaims with regard to financial information that Winstar allegedly provided to Lucent during due diligence that Lucent conducted in November and December 2000.

On November 16, 2004, the Court entered an Order (D.I. 12) denying Lucent's Motion To Withdraw The Reference To The Bankruptcy Court (D.I. 1). The Court concluded that discretionary withdrawal of the adversary proceeding was not warranted because (1) Lucent waived its right to a jury trial with regard to the claims at issue; (2) the factors set forth in

In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990), did not support a finding of cause; and (3) Lucent had not followed Local Bankruptcy Rule 5011-1. In concluding that Lucent waived its right to a jury trial, the Court found that (1) Lucent waived its right to a jury by filing proofs of claim, and (2) Lucent was not entitled to rely on the Trustee's jury demand after having waived its right to a jury.

On December 15, 2004, Judge Rosenthal denied Lucent's Motion For Summary Judgment On Counts VII, X, and XI of the Second Amended Complaint And For Partial Summary Judgment On Lucent's Affirmative Defense Of New Value (A.D.I. 210) in the Bankruptcy Court. The Bankruptcy Court has not determined whether this matter is a core or non-core proceeding.

II. Legal Standard

Under 28 U.S.C. § 1292(b), leave to file an interlocutory appeal may be granted when the order at issue (1) involves a controlling question of law upon which there is (2) a substantial difference of opinion, and (3) when immediate appeal from the order may materially advance the ultimate termination of the litigation. The party seeking leave to file an interlocutory appeal must establish that exceptional circumstances justify a departure from the basic policy of postponing review until after the entry of final judgment. First Am. Bank of New York v. Century Glove, Inc., 64 B.R. 958, 961-62 (D. Del. 1986) (citing

Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978)).

III. Discussion

By its Motion, Lucent contends that the Court's November 16 Order should be certified for appeal, because the Court's denial of Lucent's motion to withdraw the reference was based on the Court's conclusion that Lucent waived its right to a jury trial. Lucent contends that the Court's denial of its right to a jury trial would plainly constitute reversible error on appeal, if the Third Circuit determines that the Court erroneously adjudicated the waiver issue. Lucent contends that certification of the Order should be permitted to avoid infringing on Lucent's right to a jury trial.

If a question is such that an erroneous determination of it would require reversal on final appeal, it is a "controlling" question of law. See Katz v. Carte Blanche Corp., 496 F.2d 747, 755 (3d Cir. 1974). If a case is tried in a court with no jurisdiction, "certain reversal of the judgment on jurisdictional grounds" is sure to follow. Id. However, Section 1292(b) is not designed for review of factual matters. Link v. Mercedes-Benz of North America, Inc., 550 F.2d 860, 863 (3d Cir. 1976).

Reviewing the issues presented by Lucent in light of the standard for granting leave to file a motion for interlocutory appeal, the Court concludes that Lucent has not presented controlling and purely legal questions justifying interlocutory

review. While the question of whether the Court properly read Federal Rule of Civil Procedure 38(d) to permit an exception to the consent requirement for withdrawal of a jury trial demand when a party has previously waived its right to a jury trial presents a legal question, that legal question is first premised on the mixed factual and legal question concerning whether a party has waived its right to a jury trial. Lucent contends that the waiver issue presents a purely legal question, because the Court erred in failing to apply the legal analysis referenced in Billing v. Ravin, Greenberg & Zackin, P.A., 22 F.3d 1242 (3d Cir. 1994). Specifically, Lucent contends that the Court was required to conduct a detailed comparison between the adversary proceeding and the proofs of claim when determining whether those claims should be tried in equity.

It is evident from the Court's November 16 decision that the Court considered the Third Circuit's decision in Billing. Thus, the Court is not persuaded that Lucent's argument is directed to the purely legal question of the applicable standard to be applied to waiver questions. Rather, in the Court's view, Lucent's argument goes more to the *manner* in which the Court applied the Billing decision to the facts of this case, a mixed question of law and fact. Because factual questions permeate the waiver issue, the Court concludes that the issues raised by Lucent are not suitable for interlocutory appeal.

In addition, even if the questions presented can be considered controlling legal questions, the Court concludes that Lucent has not demonstrated that a substantial ground for difference of opinion exists with regard to the determinations made by the Court and subject to the request for interlocutory appeal. The Court's decision in its November 16 Order is consistent with the decisions of other courts who have also considered the issue of waiver as it relates to the consent provision of Rule 38(d). See, e.g., In re Roman Catholic Archbishop of Portland in Oregon, 2005 WL 196477, *3 (D. Or. January 28, 2005) (citing In re Carrington Gardens Assoc., 248 B.R. 752, 767 (Bankr. E.D. Va. 2000)); Glaxo Wellcome, Inc. v. Genpharm, Inc., 1997 WL 381939, *1 (S.D.N.Y. July 9, 1997); Rosen v. Dick, 639 F.2d 82 (2d. Cir. 1980). Accordingly, the Court concludes that Lucent has not demonstrated that certification to appeal the Court's November 16 Order is warranted.

IV. CONCLUSION

NOW THEREFORE, IT IS HEREBY ORDERED, this 8 day of September 2005, that the Motion To Certify Order For Appeal Pursuant To 28 U.S.C. § 1292(b) (D.I. 13) filed by Defendant Lucent Technologies, Inc. is DENIED.

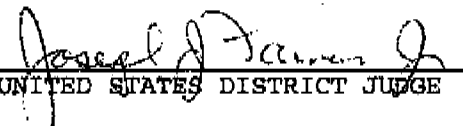

UNITED STATES DISTRICT JUDGE

EXHIBIT F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WINSTAR COMMUNICATIONS, INC., et al.,

Debtors.

CHRISTINE C. SHUBERT, CHAPTER 7
TRUSTEE OF WINSTAR COMMUNICATIONS,
INC. AND WINSTAR WIRELESS, INC.,

Plaintiff,

v.

LUCENT TECHNOLOGIES INC.,

Defendant.

Chapter 7

Case No. 01-1430 (KJC)

Jointly Administered

Adv. Pro. No. 01-1063 (JBR)

TRUSTEE'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO STRIKE

Of Counsel:

Sheldon K. Rennie, Esquire
(DE Bar No. 3772)

On the Brief:

Stephen M. Rathkopf, Esquire
Andrew C. Gold, Esquire

FOX ROTHSCHILD LLP

Citizens Bank Center
919 North Market Street
Suite 1300
Wilmington, DE 19899-2323
Telephone: (302) 654-7444

HERRICK, FEINSTEIN LLP

2 Park Avenue
New York, New York 10016-9301
Telephone: (212) 592-1400
Facsimile: (212) 592-1500

*Attorneys for Plaintiff Christine C.
Shubert, Chapter 7 Trustee*

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TABLE OF AUTHORITIES

Cases

<i>Amedisys, Inc. v. JP Morgan Chase Manhattan Bank (In re Nat'l Century Fin. Enters, Inc.)</i> , 334 B.R. 907 (Bankr. S.D. Ohio 2005).....	2, 3, 4
<i>Food Distrib. Ctr. v. Food Fair, Inc. (In re Food Fair, Inc.)</i> , 15 B.R. 569 (Bankr. S.D.N.Y. 1981).....	3
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<i>Gen. Elec. Capital Corp. v. Dial Bus. Forms, Inc. (In re Dial Bus. Forms, Inc.)</i> , 341 F.3d 738 (8th Cir. 2003).....	2
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<i>In re Dow Corning Corp.</i> , 263 B.R. 544 (Bankr. E.D. Mich. 2001)	2
<i>In re Neshaminy Office Bldg. Assocs.</i> , 62 B.R. 798 (E.D. Pa. 1986).....	3
<i>In re Reid</i> , 107 B.R. 79 (Bankr. E.D.Va. 1989)	3
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<i>Metro N. St. Bank v. The Barrick Group, Inc. (In re Barrick Group, Inc.)</i> , 100 B.R. 152 (Bankr. D. Conn. 1989).....	2, 3
<i>Nantucket Investors II v. Calif. Fed. Bank (In re Indian Palms Assoc., Ltd.)</i> , 61 F.3d 197 (3d Cir. 1995)	2, 5
<i>NWL Holdings, Inc. v. Eden Ctr., Inc. (In re Ames Dep't. Stores, Inc.)</i> , 320 B.R. 518 (Bankr. S.D.N.Y. 2005).....	4
<i>Saco Loc. Dev. Corp. v. Armstrong Bus. Credit Corp. (In re Saco Loc. Dev. Corp.)</i> , 13 B.R. 226 (Bankr. D. Me. 1981)	3
<i>WB, Ltd. v. Tobago Bay Trading Co. (In re Tobago Bay Trading Co.)</i> , 142 B.R. 534 (Bankr. N.D. Ga. 1992)	2, 3

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Christine C. Shubert, Chapter 7 Trustee for the estates of Winstar Communications, Inc., and Winstar Wireless, Inc., respectfully submits this reply to the Opposition of Lucent Technologies Inc. to the Trustee's Motion to Strike (the "Opposition") (Adv. Proc. Docket No. 391), filed on February 6, 2006.¹

PRELIMINARY STATEMENT

Lucent contends that this Court lacks authority to grant the Trustee's motion to strike Lucent's designation of documents from the general bankruptcy docket that were never admitted in evidence, not relied on by Lucent below, not considered by the trial court, and not otherwise part of the adversary proceeding docket.² Lucent is plainly wrong, as demonstrated in the many decisions that have already addressed this specific issue and decided it in the Trustee's favor. Lucent's position has repeatedly been rejected because it makes no sense. The Bankruptcy Court is the only court that knows what was considered in reaching the decision to be appealed. And as appellate courts note time and time again, in reviewing the decision of a lower court, the appellate record is limited to the evidence and other materials that the lower court considered when it issued its decision.

Lucent is also wrong in its fall-back argument -- that the hundreds of irrelevant general bankruptcy docket filings that Lucent failed to move into evidence in the adversary proceeding or otherwise raise with this Court during trial should be included in the appellate record (and considered by the appellate court for the first time) under principles of judicial notice. As will be demonstrated below, they should not and the very authority cited by Lucent so holds.

¹ Terms defined in the Trustee's moving brief have their same meaning here.

² After this motion was made, Lucent conceded that its designation of unadmitted trial exhibits was improper, and has agreed to stipulate to the removal of all such exhibits from the record, which the Trustee accepts.

ARGUMENT

I. The Bankruptcy Court Has The Authority To Rule On The Motion To Strike

In a twisted misreading of the Third Circuit's decision in *Nantucket Investors II v. Calif. Fed. Bank (In re Indian Palms Assoc., Ltd.)*, 61 F.3d 197 (3d Cir. 1995), Lucent suggests that this decision limits consideration of motions to strike to the appellate court. While *In re Indian Palms* does involve appellate court consideration of a motion to strike, it does not hold that the bankruptcy (trial) court cannot consider such a motion, or indeed, which court should consider such a motion.³ There, the Appellee did not move before the bankruptcy court, but moved to strike instead before the district court. *Id.* at 201.

As set forth in the Trustee's moving brief, the overwhelming majority of courts that have actually considered the issue agree with the Trustee's position -- that the trial court is in the best position to determine what material it relied upon in reaching its decision, and accordingly, what material should be included in the record. See *Amedisys, Inc. v. JP Morgan Chase Manhattan Bank (In re Nat'l Century Fin. Enters, Inc.)*, 334 B.R. 907, 912-13 (Bankr. S.D. Ohio 2005) ("A majority of the courts conclude that a bankruptcy court has the power to rule on disputes over the contents of the appellate record.") (citing *WB, Ltd. v. Tobago Bay Trading Co. (In re Tobago Bay Trading Co.)*, 142 B.R. 534, 536 (Bankr. N.D. Ga. 1992) ("[F]ind[ing] that it retains jurisdiction for the limited purpose of adjudicating [a] dispute concerning the contents of the record on appeal."); *Metro N. St. Bank v. The Barrick Group, Inc. (In re Barrick Group, Inc.)*, 100 B.R. 152, 154 (Bankr. D. Conn. 1989) ("[B]ankruptcy court should determine in the first

³ Nor do the two out-of circuit opinions cited by Lucent: both courts relied on *In re Indian Palms* for the proposition that an appellate court could consider a motion to strike, not for the proposition that *only* an appellate court could consider a motion to strike. *Gen. Elec. Capital Corp. v. Dial Bus. Forms, Inc. (In re Dial Bus. Forms, Inc.)*, 341 F.3d 738 (8th Cir. 2003); *In re Dow Corning Corp.*, 263 B.R. 544, 547 (Bankr. E.D. Mich. 2001) (*In re Dow Corning Corp.* did hold, contrary to the majority view expressed in the cases cited by the Trustee, that a bankruptcy court lacks power to determine a motion to strike, but did not cite *In re Indian Palms* as authority for its holding).

instance whether a disputed item in a designation of record on appeal played any part in its deliberations ... this court retains jurisdiction to consider and rule upon [an] objection [to the designation].”) (citations omitted); *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 802 (E.D. Pa. 1986) (“The Bankruptcy Court resolves disputes over the proper contents of the appellate record in the first instance.”) (citation omitted); *Food Distrib. Ctr. v. Food Fair, Inc.* (*In re Food Fair, Inc.*), 15 B.R. 569, 572 (Bankr. S.D.N.Y. 1981) (“This Court determines that it does have jurisdiction, in the first instance, to consider the proposed modification of the record.”); *Saco Loc. Dev. Corp. v. Armstrong Bus. Credit Corp.* (*In re Saco Loc. Dev. Corp.*), 13 B.R. 226, 229 (Bankr. D. Me. 1981) (determining “that it does have jurisdiction to correct or modify the record on appeal”).

As the court in *Nat'l Century* confirmed:

These courts subscribing to the majority position have found that such authority (over the record on appeal) should remain with the bankruptcy court. Leaving this authority with the bankruptcy court will assist the appeal process as the bankruptcy court is in the best position to possibly strip off items improperly designated in a record on appeal. Sitting as the court of first impression, a bankruptcy court, according to the majority position, knows whether the parties placed the items in dispute before the court prior to its issuance of an appealable order. “While the filing of a notice of appeal generally divests a bankruptcy court of jurisdiction to proceed with respect to matters raised by the appeal, *actions in aid of the appeal are not beyond its authority.*” *Barrick Group*, 100 B.R. at 154 (emphasis added) (citations omitted). See also *French Kezelis & Kominiarek, P.C. v. Carlson* (*In re Carlson*), 255 B.R. 22, 23 (Bankr. N.D. Ill. 2000) (“Despite pendency of an appeal from the judgment here, this Court has jurisdiction to enter orders pertaining to the appeal record in aid of the appeal process.”) (citations omitted); *Tobago Bay*, 142 B.R. at 535 (“Nonetheless, ‘actions in aid of the appeal are not beyond its authority.’”) (quoting *Barrick Group*, 100 B.R. at 154) (other citations omitted); *In re Reid*, 107 B.R. 79, 83 n. 7 (Bankr. E.D.Va. 1989) (“Generally, the timely filing of a notice of appeal divests the district court of authority to proceed further with

respect to such matters, except in aid of the appeal.”) (citation and internal quotation marks omitted).

Id. at 913. *See also* *NWL Holdings, Inc. v. Eden Ctr., Inc. (In re Ames Dep’t. Stores, Inc.)*, 320 B.R. 518, 520-21 (Bankr. S.D.N.Y. 2005) (Content of the record on appeal should be resolved by the bankruptcy court, “where the record was designated, and where the matter sought to be included in the record was (or should have been) presented.”).

Finally, the court in *Nat’l Century* looked to Rule 10(e) of the Federal Rules of Appellate Procedure, “the analogue to Rule 8006”, which provides that, “[i]f any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.” Fed. R. App. P. 10(e)(1). The *Nat’l Century* court relied upon that rule in a bankruptcy appeal:

Thus, if any difference arises concerning the record in the district court, the difference shall be submitted to and settled by the district court, the court in which the record was made . . . Applying Appellate Rule 10(e) to the present situation *also* directs this Court, where the original record was made, to decide this dispute over the record on appeal.

Id. at 916 (emphasis in original).

II. Only Record Items Considered By This Court In Issuing The Order Lucent Now Appeals Are Properly Included In The Appellate Record

Lucent also suggests that the Court should ignore Lucent’s designations from the general bankruptcy docket (as opposed to the adversary proceeding docket) because Lucent can ask the District Court to take judicial notice of the items in dispute.⁴ Lucent ignores the well-settled rule that the record must normally be limited to the matters considered by the bankruptcy court in reaching its decision in an adversary proceeding and cannot include other documents in the

⁴ We would note that the pleadings for this case are all part of the adversary proceeding docket, and there is no need to cite the general bankruptcy docket to include pleadings for this case. (*See* Lucent’s Opposition, p. 1, suggesting the contrary).

general bankruptcy docket that were not considered by the court in the adversary proceeding in entering the order being appealed. In so arguing, Lucent ignores, among other cases cited by the Trustee, *In re Ames*, holding that “if an item was not considered by the [bankruptcy] court, it should be stricken from the record on appeal.” *Ames*, 320 B.R. at 521.

To bolster its argument, Lucent improperly relies on *In re Indian Palms*. There, the Third Circuit carefully and expressly distinguished the inclusion of bankruptcy filings in a record for an appeal from a contested matter (as in the *Indian Palms* case) and adversary proceedings, like the present matter. While holding that documents from the general bankruptcy docket may be part of the record for a contested matter, the Court reaffirmed its earlier holding that “a bankruptcy judge deciding an adversary proceeding, which is an independent litigation, and an appellate court reviewing that decision, cannot properly use documents filed only in the underlying bankruptcy case unless that use can be justified under the judicial notice doctrine.” *Id.* at 204 (citing *In re Aughenbaugh*, 125 F.2d 887, 889 (3d Cir. 1942)). The Third Circuit went on to specifically highlight the very limited circumstances under which the doctrine of judicial notice might permit consideration of a document not considered by the trial court. *Id.* at 204-205.

Here, Lucent has given this Court no basis to conclude that judicial notice might justify inclusion of the bankruptcy court filings in the record; moreover, Lucent has not even tried to explain its failure to move any of these documents in evidence (or at a bare minimum, even mention the documents) during the trial below, if it believes that they were relevant to the issues being tried.

Lucent apparently intends to use the new materials to advance new arguments. But the Third Circuit expressly rejected this tactic in *Indian Palms*, by holding that judicial notice cannot be used as a substitute for evidence that should have been offered in the trial court. *Id.* at 205.

Finally, a request for judicial notice must be assessed only in the context of a request to take notice of a specific item for a specific purpose. *Id.* See also, *Liberty Mutual Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992) (judicial notice of a court document may be taken only to establish that the document was filed, and not “for the truth of the matters asserted”). Judicial notice cannot be sought en masse, by designating hundreds of new bankruptcy record items without any explanation as to their relevance or significance. Lucent has not identified the portion of any of these items it intends to rely upon, nor described the purpose for which it seeks to use such items. As a result, Lucent’s designation of these items is not only inappropriate, but unsupported as well.

III. The Bankruptcy Court Can Limit The Issues On Appeal

Lucent does not dispute that the Bankruptcy Court never decided issues 13, 14, and 15 of the Issues Designation. Lucent also does not dispute that the District Court has already decided issues 13, 14 and 15 twice. While Lucent now states that it included those issues for “further” appellate review (*see* Lucent’s January 26, 2006 letter, attached as Exhibit A to Lucent’s Opposition) -- presumably referring to an appeal to the Third Circuit -- it does not also state that it will not pursue appeal of those issues before the District Court. To attempt to resolve this issue, we hereby stipulate that we have no objection to the Court of Appeals for the Third Circuit considering such issues, and that we will not argue such issues were not properly preserved for appeal to that court if they are withdrawn from the Issues Designation. But if Lucent refuses to withdraw issues 13, 14 and 15 from the Issues Designation, our position remains firm that these issues are not the proper subject of the upcoming appeal to the District Court.

Lucent argues only that this Court lacks the power to strike any of Lucent’s designated issues. There appear to be no authorities suggesting that the Bankruptcy Court either can or cannot strike issues from the Issues Designation. It is the Trustee’s position that as with record

designations, the bankruptcy court is appropriately qualified to determine what issues it decided and are therefore properly included in the Issues Designation. Recognizing, however, that there appears to be no case law addressing this Court's power (or lack thereof) to decide this issue, we defer to the Court, and will argue the issue before the district court if the Court believes that to be the more appropriate course.

CONCLUSION

For the reasons set forth above as well as those reasons set forth in the Trustee's Motion to Strike, the Trustee respectfully requests that this Court grant the motion.

Dated: February 9, 2006
Wilmington, Delaware

/s/ Sheldon K. Rennie (#3772)
Sheldon K. Rennie, Esquire
Delaware Bar No. 3772
FOX ROTHSCHILD LLP
919 N. Market Street, Suite 1300
Wilmington, DE 19801-3046
Telephone (302) 654-7444

-and-

Stephen M. Rathkopf, Esquire
Andrew C. Gold, Esquire
HERRICK FEINSTEIN LLP
2 Park Avenue
New York, NY 10016
(212) 592-1400

*Attorneys for Christine C. Shubert, Chapter 7
Trustee*

EXHIBIT G

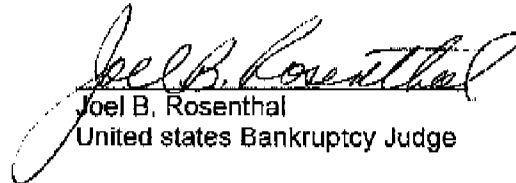
days of the date of this Order, submit a list of disputed exhibits, along with any citations to the trial transcript relevant to resolving the issue of whether a document was or was not admitted at trial.

2. To the extent the Motion to Strike seeks to strike pleadings from the record on appeal, the Motion is DENIED without prejudice to the parties seeking additional relief from the district court which will hear the appeal. It is the district court which should decide whether it will take judicial notice any of these pleadings. Fed. R. Evid. 201(f); *Nantucket Investors II v. Calif. Fed. Bank (In re Indian Palms Assocs., Ltd.)*, 61 F.3d 197, 204 (3d Cir. 1995).

3. To the extent the Motion to Strike seeks to have this Court strike certain issues from Lucent's statement of issues on appeal, the Motion is DENIED. That determination should also be left to the district court.

4. The Trustee's request for oral argument on the Motion to Strike is DENIED.

Dated: February 15, 2006


Joel B. Rosenthal
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: Winstar Communications, Inc., et al.

Lucent Technologies Inc.,	:	
	:	
Appellant,	:	
	:	Civil Action No.: 06-147
v.	:	
	:	
Christine C. Shubert, Chapter 7 Trustee,	:	
	:	Bankruptcy Case No.: 01-1430
Appellee.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of March, 2006 one (1) copy of *Declaration of David R. King in Connection with the Appellee Chapter 7 Trustee's Motion to Strike Items From Lucent Technologies Inc.'s Designation of Record on Appeal and Issues From Lucent Technologies Inc.'s Statement of Issues on Appeal* was served upon the individuals listed below in the manner specified:

VIA HAND DELIVERY

Daniel J. DeFranceschi, Esquire
Rebecca Booth, Esquire
Richards Layton & Finger, P.A.
One Rodney Square, P.O. Box 551
Wilmington, DE 19899

VIA HAND DELIVERY

Office of the United States Trustees Office
844 King Street, Suite 2313
Lockbox 35
Wilmington, DE 19801-2313

U.S. MAIL

Craig Goldblatt, Esquire
Wilmer Cutler Pickering Hale & Dorr, LLP
399 Park Avenue
New York, NY 10022

VIA FEDERAL EXPRESS

Lillian Grossbard, Esquire
Cravath Swain & Moore
825 8th Avenue, Room# 3906W
New York, NY 10019

VIA FEDERAL EXPRESS

Craig Goldblatt, Esquire
Wilmer Cutler Pickering Hale & Dorr, LLP
2445 M. Street, NW
Washington, DC 20037

/s/ Sheldon K. Rennie (#3772)

Sheldon K. Rennie, Esquire